115—122

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 136.

THE COMMISSIONERS OF BUNCOMBE COUNTY, E. CLAYTON, FRY & DEAL, ALLEN CANNON & CO., W. P. FORTUNE, M. J. FAGG, GEORGE C. PERRIN, RICE & COLEMAN, JOHN GARRISON AND H. H. GRAMLIN, APPELLANTS,

vs.

VINCENT R. TOMMEY, THE ATLANTA ROLLING MILL COMPANY, AND WILLIAM H. INMAN AND JOHN B. CLEVELAND, TRUSTEES, &c.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

FILED OCTOBER 22, 1881.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 136.

THE COMMISSIONERS OF BUNCOMBE COUNTY, E. CLAYTON, FRY & DEAL, ALLEN CANNON & CO., W. P. FORTUNE, M. J. FAGG, GEORGE C. PERRIN, RICE & COLEMAN, JOHN GARRISON AND H. H. GRAMLIN, APPELLANTS,

vs.

VINCENT R. TOMMEY, THE ATLANTA ROLLING MILL COMPANY, AND WILLIAM H. INMAN AND JOHN B. CLEVELAND, TRUSTEES, &c.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

INDEX.

	Original.	Print.
Caption	1	1
Original bill	2	1
Exhibit "A"—Deed between S. & A. R. R. Co. and Inman & Cleveland, trustees, Oct. 1, 1876	42	12
Prosecution bond	75	22
Notice to D. R. Duncan for injunction and appointment of receiver	78	23
John B. Cleveland & W. H. Inman, appointment of receiver	79	23
Ephraim Clayton, appointment of receiver	80	23
John Garrison, appointment of receiver	81	24
Fry & Deal, appointment of receiver	82	24
Rice & Coleman, appointment of receiver	83	25

JUDD & DETWEILER, PRINTERS, WASHINGTON.

	Original.	Print.
Answer of D. R. Duncan, president, &c.	85	25
Order granting injunction and appointing receiver	90	28
Bond of James Anderson, receiver	98	30
Subpœna	101	30
Answer of W. H. Inman and John B. Cleveland	104	31
Answer of Spartanburg & Asheville railroad	110	33
Report of James Anderson, receiver	115	34
Agreement of counsel as to filing answers	117	35
Motion to make Buncombe county party defendant	119	36
Decree for injunction and appointing receiver	120	36
Bond of James Anderson, receiver	128	38
Answer of John Garrison	131	39
Exhibit "A"—Notice and claim of lien of John Garrison, April 2, 1878	137	42
Answer of Fry and Deal	140	43
Exhibit "A"—Notice and claim of lien of Fry & Deal, August 3, 1878	155	49
Answer of E. Clayton	158	51
Board of Commissioners of Buncombe county	172	57
Rice and Coleman	189	64
Replication	201	69
Order appointing master	204	70
Motion to make Allen, Cannon & Co., and others, parties defendant	208	71
Motion to make Thadeus Coleman party defendant	209	71
Motion in favor of Rice & Coleman to amend answer, &c.	210	72
Motion in behalf of Buncombe county, and others, to file cross-bill, &c	211	72
Order appointing A. Burwell special master	212	73
Amended answer of E. Clayton	215	73
Report of A. Burwell, special master	218	74
Testimony of D. R. Duncan	254	87
T. H. Counts	300	106
W. K. Blake	301	106
R. Y. McAdin	316	113
James Morris	329	117
G. W. Clayton	336	120
R. L. Coleman	341	122
J. A. Deal	344	123
John Garrison	346	123
V. R. Tommey	358	128
T. W. Chandler	367	132
Exhibit A—Notice of Spartansburg & Asheville R. R. Co., Sept 1, 1877	370	133
B—Resolution of Atlanta Rolling Mill Co., Oct. 18, 1878	371	134
D—Resolution of Rolling Mill Co., Jan. 8, 1879	372	134
E—Minutes of Rolling Mill Co., Jan. 23, 1877	373	135
F—List of bonds of S. & A. R. R. Co., held by Rolling Mill Co., &c.	374	135
Testimony of Albert Cannon	376	136
R. W. Allen	382	139
J. P. Johnston	383	139
C. G. McDowell	384	139
Accepted draft of W. T. Sanders	385	139
Account of C. G. McDowell, for board, &c.	386	140
Testimony of T. A. Allen	387	140
Account of T. A. Allen	389	141

	Original.	Print.
Draft of A. Tanner, superintendent, in favor of T. A. Allen	390	141
Testimony of J. E. Fry	391	141
Ephraim Clayton	393	141
E. M. Clayton	395	143
George C. Perrin	401	145
Exhibit—Letter of G. C. Perrin to Capt. Carter, Nov. 7, 1878	402	146
Testimony of T. Coleman	403	146
Exhibit—Statement of account of S. & A. R. R. Co. with M. J. Fagg	410	149
Testimony of R. B. Vance	411	149
G. Cannon	422	154
D. R. Duncan	425	155
J. A. Deal	427	156
W. K. Blake	428	156
Report of receiver James Anderson, to October 20th, 1879	430	157
General statement of receiver	432	158
Transcript of case from State court of Rice & Coleman *vs.* S. & A. Railroad Company	433	159
Thadeus Coleman *vs.* Same	452	166
Allen Cannon & Co. *vs.* "	463	171
E. Clayton *vs.* "	478	176
John Garrison *vs.* "	487	180
Geo. C. Perrin *vs* "	499	185
Goodwin & Davis *vs.* "	506	188
C. W. Pearson *vs.* "	509	189
L. J. Pace *vs.* "	512	190
H. H. Gramlin *vs.* "	515	192
Report of D. R. Duncan, president of S. & A. R. R.	524	195
Account of Simpson Bobo *vs.* S. & A. R. R. Co.	533	198
E. Clayton *vs.* Same	535	199
Bank of Charleston *vs.* "	538	200
James M. McMakin *vs.* "	540	201
W. C. Cannon *vs.* "	542	202
Fry & Deal *vs.* "	553	211
Estimates of Fry & Deal *vs.* "	556	212
Note of Pelzer, Rogers & Co. *vs.* "	558	213
J. E. Adger & Co. *vs.* "	562	215
Account of C. T. Lounders *vs.* "	564	215
W. K. Blake *vs.* "	567	216
W. H. Inman *vs.* "	568	217
H. F. King *vs.* "	569	217
J. T. Ballinger *vs.* "	571	218
Robinson, Taylor & Co. *vs.* "	572	219
John S. Fairly & Co. *vs.* "	577	221
1st Nat. B'k of Charleston *vs.* "	579	222
S. W. & C. R. R. Co. *vs.* "	582	223
Estate of Joseph Foster *vs.* "	597	230
G. Cannon *vs.* "	599	231
Joseph Walker *vs.* "	600	232
F. M. Fremmier *vs.* "	602	232
J. H. Evins *vs.* "	604	233
B'k of Charleston, N.B. A. *vs.* "	606	234
A. S. Brown & Co. *vs.* "	609	235

		Original.	Print.
Account of Edwin Bates & Co. *vs.* S. & A. R. R. Co		610	236
Robert Wilson *vs.*	same	612	237
T. A. Allen *vs.*	"	613	237
A. Tanner *vs.*	"	615	238
Joseph Davis *vs.*	"	616	238
J. B. Davis *vs.*	"	617	238
People's National Bank of Charleston, S. C., *vs.*	"	618	239
Rice & Coleman *vs.*	"	620	240
D. R. Duncan *vs.*	"	621	241
J. M. Caffin *vs.*	"	622	241
J. H. Faulkner *vs.*	"	623	241
Tom. Hiatt *vs.*	"	624	241
R. J. F. Wall and B. F. Alverson *vs.*	"	625	241
E. Clayton *vs.*	"	626	242
Thomas Symons *vs.*	"	627	242
Noah Wolfe *vs.*	"	628	242
Fry & Deal *vs.*	"	629	243
J. A. Bush *vs.*	"	630	244
J. B. Tanner *vs.*	"	631	244
J. H. Cantrell & Co. *vs.*	"	632	245
B. F. Bush *vs.*	"	634	246
Hall and Alverson *vs.*	"	635	246
Spartanburg Herald *vs.*	"	636	247
B. F. Walker *vs.*	"	638	247
W. H. West *vs.*	"	639	248
J. P. West *vs.*	"	640	248
J. B. O. Landrum *vs.*	"	641	249
M. L. Williams *vs.*	"	642	249
J. B. Rose *vs.*	"	643	250
F. Cantrell *vs.*	"	644	250
J. B. Ballinger *vs.*	"	645	251
A. C. Davis *vs.*	"	646	251
P. J. Davis *vs.*	"	647	252
M. J. Fagg *vs.*	"	648	252
P. S. Whisenant *vs.*	"	650	253
P. S. Whisenant & Sons *vs.*	"	652	254
M. P. Penland & Sons *vs.*	"	654	255
S. W. & C. R. R. Co. *vs.*	"	658	258
E. Clayton (with estimates) *vs.*	"	660	259
Exceptions of Commissioners of Buncombe county to master's report		700	274
M. J. Fagg	" "	708	276
G. C. Perrin	" "	709	277
Allen Cannon & Co.	" "	711	277
E. Clayton	" "	713	278
Fry & Deal	" "	722	281
Thadeus Coleman	" "	724	281
Rice and Coleman	" "	726	282
H. H. Gramlin	" "	737	285
W. P. Fortune	" "	738	286
T. G. Williamson	" "	739	286

	Original.	Print.
Exceptions of John Garrison to master's report	740	286
Plaintiff's " "	742	287
W. H. Inman " "	745	288
Petition of W. P. Fortune	747	288
H. H. Gramlin	749	289
T. G. Williamson	752	290
Allen Cannon & Co.	754	291
G. C. Perrin	757	292
M. J. Fagg	759	292
Thadeus Coleman	761	293
Agreement of counsel as to taking of testimony	766	295
Order making trustees parties plaintiff, &c.	777	295
Exceptions of defendants to the ruling of the court	780	296
Order allowing S. & A. R. R. Co. to amend answer	782	296
Amended bill	784	297
Subpœna for S. & A. R. R. Company	792	299
Answer of defendants S. & A. R. R. to amended bill	796	300
Fry & Deal to amended bill	799	301
Board of Commissioners of Buncombe county to amended bill	803	302
E. Clayton to amended bill	814	306
Rice & Coleman to amended bill	824	309
Replication to answers to amended bill	838	314
Supplemental report of A. Burwell, master	840	315
Testimony of James P. Sawyer	851	318
G. W. Fletcher	859	320
J. E. Rankin	865	323
John Garrison	867	323
R. L. Coleman	868	324
D. R. Duncan	870	324
John H. Blasingame	871	324
Report of James Anderson, receiver, to May 31st, 1880	873	325
Statement of same	876	327
Decree directing sale of road, &c.	878	228
Appeal prayed and granted	900	331
Appeal bond	901	331
Bond of W. H. Inman, Commissioner	905	333
Bond of John B. Cleveland, Commissioner	909	334
Report of sale by Commissioners	912	335
Report of special master as to compensation of solicitors, and evidence thereon	919	337
Exception of defendants to report of special master, making allowance to be paid to counsel	958	351
Exceptions of defendants to report of sale by Commissioners	961	352
Order overruling exceptions and confirming report of sale	964	353
Appeal prayed and granted	965	353
Consent of holders of receiver's pay certificates to pay costs, &c	967	354
Report of solicitors as to compensation to be allowed special master	969	354
Decreetal order on report of special master, on fees and compensation of solicitors, &c.	971	355
Order of Supreme Court allowing withdrawal of transcript	975	356

	Original.	Print.
Motion to file appeal bond and to amend record, &c.	976	356
Appellees' objection to motion	977	357
Order of court allowing amendments and allowing appellants to file appeal bond	979	358
Appeal bond	982	359
Clerk's certificate	985	360

1 UNITED STATES OF AMERICA,

Western District of North Carolina:

Circuit Court, Fourth Circuit, at Char lotte.

Be it remembered that on the 26th day of October, one thousand eight hundred and seventy-eight, Vincent R. Tommey and Atlanta Rolling Mill Company, by their solicitors, W. P. Bynum, W. S. Thompson, filed their bill in the office of our court of equity in the circuit court of the United States for the western district of North Carolina, at Charlotte, against The Spartanburg and Asheville Railroad Company, John B. Cleveland and W. H. Inman, trustees, S. M. Rice and R. L. Coleman, partners under the name and style of Rice and Coleman, J. E. Fry and J. A. Deal, partners under the name and style of Fry and Deal, E. Clayton, and John Garrison, which said bill of complaint and the exhibit appended thereto are in the words and figures as follows, to wit:

2 Circuit Court of the United States, Western District of North Carolina. In Equity.

To the honorable the judges of the circuit court of the United States for the western district of North Carolina:

Vincent R. Tommey, a citizen of the State of Georgia, resident in the town of Decatur, and the Atlanta Rolling Mill Company, a corporation created by the laws of the State of Georgia, having its principal office or place of business in the city of Atlanta, in said State of Georgia, with full authority to sue and be sued by said incorporate name, in their own behalf and in behalf of all other persons not parties to this suit who hold any of the "first mortgage seven per cent. gold bonds" of the Spartanburg & Asheville Railroad Company hereinafter referred to, and who shall be entitled to avail themselves of the benefit of this suit, bring this their bill
3 against the Spartanburg & Asheville Railroad Company, a corporation created by and existing under the laws of the respective States of South Carolina and North Carolina, and having its principal office and place of business in the town of Spartanburg, in the State of South Carolina, John B. Cleveland, a citizen of said State of South Carolina, resident in said town of Spartanburg, William H. Inman, a resident and citizen of the city and State of New York, S. M. Rice and R. L. Coleman, partners under the name and style of Rice and Coleman, of the county of Union, S. C., J. E. Fry and J. A. Deal, partners, under the name and style of Fry & Deal, of the county of Polk, N. C., E. Clayton, ——— composing the firm of E. Clayton ———, of the county of Buncomb, and John Garrison, of the county of Polk, all of the States of North Carolina, and citizens of said State of North Caro-
4 lina, western district, and complaining say, that the Spartanburg and Asheville Railroad Company, in South Carolina, was a railroad corporation duly created by and under an act of the Legislature of the State of South Carolina, entitled

"An act to incorporate the Spartanburg & Asheville Railroad Company," approved February 20th, 1873, and that by its said act of incorporation and other acts of the Legislature of the State of South Carolina amendatory thereof or relating to railroads generally, full power and authority was conferred upon it, among other things, to survey, lay out, and construct a railroad from said town of Spartanburg, or from some point on some railroad in the vicinity of said town and connecting therewith, to the North Carolina line, in the direction of Rutherfordton, North Carolina, and the same to equip, use, and enjoy with all the rights, privileges, and im-
5 munities granted to the Greenville and Columbia Railroad Company, under the act incorporating the same, and the several acts amendatory thereof, and to consolidate with the Greenville & French Broad Railroad Company upon such terms, conditions, and provisions as should be agreed upon by and between such companies so consolidating or uniting; and further, to purchase, hold, and convey any property, either real or personal, to make contracts and do all other lawful acts properly incident to, and connected with, said corporation.

That the Greenville and French Broad Railroad Company was a railroad corporation duly created by and under an act of the Legislature of the State of North Carolina, entitled "An act to incorporate the Greenville & French Broad Railroad Company," passed by the General Assembly at the session of A. D. 1854 and 1855, and
6 ratified the 13th day of February, 1855; and that by its said act of incorporation and other acts of the Legislature of the State of North Carolina amendatory thereof, or by virtue of which said incorporation was authorized to act, power and authority was conferred upon it, among other things, to survey, lay out, and construct a railroad which should connect with a South Carolina railroad and extend along the French Broad Valley across the western part of the State of North Carolina so as to effect direct communication between the South Carolina railroad and the East Tennessee and Virginia railroad, with the right to borrow any amount of money it might see fit, not exceeding two millions of dollars, and give a mortgage or lien on said road or any portion thereof, and in their discretion to make the northern terminus of their road at Asheville, in the county of Buncombe, to equip, use, and enjoy
7 said railroad, with all the rights, privileges and immunities relating thereto, or to any connecting South Carolina railroad, and to consolidate with the Spartanburg & Asheville Railroad Company, chartered by the State of South Carolina.

Orators further show that on or about the 31st day of July, 1874, the said Spartanburg & Asheville Railroad Company, of South Carolina, and said Greenville and French Broad Railroad Company, of North Carolina, were, by an agreement in writing duly executed by and between the said two companies, duly consolidated and united into one corporation under the name and style of the Spartanburg & Asheville Railroad Company, and thenceforth became one body corporate under that corporate name; and that thereupon all of the property of every description of the said railroad companies,

8 including said two railroads, with all their fixtures, incidents, and appurtenances, and also all the rights, powers, privileges, property, franchises, and immunities which had previously been possessed by the said companies separately, became and were united together and vested in the said consolidated company, and said consolidated company from thenceforth has had, owned, used, and enjoyed the same.

Orators further show that the said consolidated company having, by such consolidation, become the owner of the said two railroads, which were thereafter known as the Spartanburg & Asheville railroad, a portion of which had been graded, and all of which remained to be completed and equipped, determined to raise the amount which it required for completing, equipping, and furnishing said railroad by issuing its bonds to the amount, altogether,

9 of ten thousand dollars a mile for each mile of said railroad, estimated to amount, in the aggregate, to six hundred and seventy thousand dollars, to secure the same by mortgage or trust deed hereinafter mentioned, and to negotiate said bonds, and use them or their proceeds in completing said road; and that in accordance with such determination the said Spartanburg & Asheville Railroad Company heretofore, to wit, on the 1st of October, 1876, duly executed under its corporate seal and the signature of D. R. Duncan, its president, and duly delivered to the defendants, John B. Cleveland and William H. Inman, its certain deed of trust bearing date said 1st of October, whereby, for the purpose of securing the payment of the bonds of the said company, determined to be issued as aforesaid, and all interest thereon as the same should thereafter become due and payable, and for the further consideration of one

10 dollar by the said Cleveland and Inman to the said company in hand paid, the said company did grant, convey, and transfer to said Cleveland and Inman, as trustees as aforesaid, and their successors, the said Spartanburg & Asheville railroad and the other property embraced in said mortgage, and therein described as follows, to wit: "All and singular the railroad of the said party of the first part to be constructed, and now being constructed, from the town of Spartanburg, in South Carolina, to the town of Asheville, in North Carolina, being a distance of sixty-seven miles, more or less, together with all its tract and road-bed and depot lands, its tenements, hereditaments, rights of way, and easements acquired or appropriated, or what shall hereafter be acquired or appropriated, for the purpose of a single, double, or other track, railroad, and telegraph line, and for depots, engine-houses, warehouses, ma-

11 chine shops, superstructures, erections, and fixtures, being necessary for the use of said railroad, and also all and singular the franchises owned, possessed, or acquired, or which shall hereafter be owned, possessed, or acquired by the said party of the first part, for the purpose of building and operating the said railroad above specified and described, and also all the rails, depots, yards, engine-houses, machine shops, car-houses, station-houses, iron-houses, workshops, and fixtures of said party of the first part; and including also all locomotive-, cars, tenders, and other rolling-stock or equip-

ments, and all machinery, tools, implements, fuel, and other materials for constructing, operating, and repairing the said railroad;" to have and to hold the above-described railroad and premises, and all and singular the rights, franchises, lands, and property, real and personal, thereby granted or intended to be unto said trus-
12 tees and their successors in trust for the person or persons, firm or firms, bodies politic or corporate, who had heretofore or who should thereafter "at any time become the purchasers or holders or owners of any or either of said bonds," subject to the possession and management of said Spartanburg and Asheville Railroad Company so long as no default should be made in the payment of either the interest or principal of said bonds, and so long as the other stipulations, covenants, and agreements and conditions in said mortgage contained should be observed and kept by said railroad company, which said bonds were issued by said company under and in pursuance of authority set forth in the resolutions passed at meetings of the stockholders of the Spartanburg & Asheville Railroad Company, held on the 9th of August, 1876, and referred to and in substance recited in said mortgage.

13 Orators further show that amongst the stipulations, covenants, agreements, and conditions in said mortgage contained is the following, to wit: "And this indenture further witnesseth, that the said party of the first part further covenants and agrees * * . That if default shall be made in the payment of any of the semi-annual interest due upon said bonds, or upon either or any of them, and said default should continue for six months thereafter, then after the lapse of said six months the whole principal sum mentioned in each and all of the said eleven hundred bonds shall forthwith be and become due and payable; or if default be made in the payment of the principal of said bonds, or either of them, in either of said cases the lien or encumbrance created hereby may be immediately enforced."

Orators further show that the said Spartanburg and Asheville Railroad Company, under and in pursuance of the authority
14 contained in its charter, and granted by said stockholders and directors, and set forth in said mortgage (a copy of which is hereto attached, marked "Exhibit A," with the usual prayer of reference) from time to time, issued and negotiated its eleven hundred coupon bonds, four hundred of the denomination of one thousand dollars each, five hundred of the denomination of five hundred dollars each, and two hundred of the denomination of one hundred dollars each, commonly known as its first mortgage seven per cent. gold bonds, amounting, in the aggregate, to six hundred and seventy thousand dollars, and being for the sixty-seven miles of length of said road, at the rate of ten thousand dollars per mile. That said bonds were all duly executed under the corporate seal of the said company and the signatures of its president and treasurer, and were all of like tenor and date, differing only in amount according
15 to the series, the date of each being said October 1st, 1876, the interest on each, at the rate of seven per cent. per annum, being paid semi-annually on the 1st of July and the 1st of January

of each and every year, beginning the 1st of July, 1877, and the principal of each falling due on the 1st of January, 1897, and each and all principal and interest being payable in gold coin either in the city of Charleston, South Carolina, or in the city of New York, at the option of the holder.

That one series of said bonds, to wit, those of the denomination of one thousand dollars, were numbered, respectively, from No. 1 to No. 400, inclusive; another, being those of the denomination of five hundred dollars, were numbered, respectively, from No. 1 to No. 500, inclusive; and the other, being those of the denomination of one hundred dollars, were numbered, respectively, from No.
16 1 to 200, inclusive. That by each of said bonds the said Spartanburg & Asheville Railroad Company acknowledged itself to be indebted to the bearer thereof the respective sums of one thousand dollars, five hundred dollars, and one hundred dollars, according to the series, for value received, which sum the said company promised to pay in gold coin to the holders thereof, at the places hereinbefore stated, on said 1st of January, 1879, and also to pay, in like gold coin, interest thereon at the rate of seven per cent. per annum, semi-annually, on the 1st day of July and January in each year, at either of said places, at the option of the holder, upon the presentation and surrender of the proper coupon.

That each of said bonds had annexed to it coupons for the successive semi-annual installments of interest to accrue thereon on the 1st day of July and January in each year from the 1st day of July, 1877, to the maturity of such bond, which coupons of said
17 one thousand dollar bonds were for thirty-five dollars each, of the five hundred dollar bonds for seventeen $\frac{50}{100}$ dollars each, and of the one hundred dollar bonds for three $\frac{50}{100}$ dollars each, and were on the face thereof payable as provided in the body of said bonds; and each one thousand dollar bond had endorsed thereon a certificate as follows, to wit: "We, William H. Inman & John B. Cleveland, trustees, do hereby certify that the within bond is one of a series of bonds of like amount, aggregating $400,000.00, the payment of which is secured by a mortgage to us, bearing date the 1st day of October, 1876; that said mortgage is a first lien upon the line of the said company's road, and that no more of said bonds of this denomination will be countersigned or certified by us than four hundred."

(Signed) WM. H. INMAN,
JOHN B. CLEVELAND,
Trustees.

18 Each five hundred dollar bond and each one hundred dollar bond had the same endorsement, with the exception that on the five hundred dollar bonds the figures $250,000.00, and on the one hundred dollar bonds the figures $20,000.00 supply the place of or stand in lieu of the figures $400,000 in above quoted endorsement. And as to the number of such bonds, the certificate on the five hundred dollar bonds is for five hundred, and on the one hundred dollar bonds it is for two hundred.

And your orators further show that, as they are informed and be-

lieve, all of said eleven hundred bonds, except so many as aggregate in value the sum of thirty-seven thousand dollars, are now outstanding, and that they were negotiated and sold or hypothecated by said Spartanburg & Asheville Railroad Company as bonds secured by said mortgage upon the entire property of the company which
19 it then owned or might afterwards acquire in preference to all other claims thereon; that the said company received the proceeds thereof, and chiefly with the means thereby afforded it was enabled to complete and put in *apperation* some forty-three miles of said road; that the bonds hypothecated were hypothecated to obtain money or material for completing said road, and were hypothecated with power of sale; especially was this the case with the bonds received from said railroad company by your orator, The Atlanta Rolling Mill Company; that afterwards the said bonds became objects of purchase and sale in the market of such securities, and were bought and sold upon the faith of the said mortgage furnishing the security aforesaid, and of the holders of said bonds being entitled to have such security enforced, and to be paid both principal and
20 interest of the said bonds, in case of default, from and out of the premises described in the said mortgage in preference to all other demands against the said railroad company whatsoever. That it was under the assurance that such was the case that your orators, V. R. Tommey, purchased and paid for the bonds which he holds as hereinafter stated; and your orator, V. R. Tommey, shows that heretofore he purchased for a valuable consideration, and became the owner of certain of said bonds with the coupons annexed thereto, to wit: Five of the said bonds of the denomination of one thousand dollars each, which are designated by the numbers 193, 194, 195, 196, & 197, and that he has ever since held and owned, and now holds and owns the same. And your orator, The Atlanta Rolling Mill Company, shows that it furnished most of the
21 iron with which said railroad company has laid said forty-three miles of track, and also iron with which to lay two miles more. That said iron was furnished partly on credit, and that there is still due from said railroad company therefor fifty-five thousand dollars, besides interest. That as a security, and as a condition precedent to extending said credit, your said orator demanded that it should be put upon the footing of a first mortgage creditor, and that such credit should be secured by an amount of said mortgage bonds equal to twice the amount of the principal of said credit being pledged to your orator by said railroad company. Your orator having been assured that said mortgage furnished the security it purported to furnish, that it was, as certified by said trustees, a first lien upon the line of said railroad company's road, and that your orator as the holder of such bonds
22 could have such lien enforced; that your orator extended said credit, and accepted the hereinafter-named bonds in pledge as a security for the credit so extended, with full power of sale of such bonds in the event of the failure of said railroad company to pay for said iron and discharge its indebtedness to orator as it had agreed.

Orator shows that in and by virtue of the credit extended as aforesaid, there was hypothecated to it by said railroad company, and it became and is the holder of the said first mortgage bonds of said railroad company to the amount of one hundred and five thousand dollars, besides the coupons annexed thereto, which said bonds your orator holds for the use of divers creditors of orator, and whose names with a more distinct declaration of uses your orator
23 prays leave to insert whenever it may become necessary. The bonds held, as aforesaid, by your orator, with the coupons annexed thereto, are as follows, to wit: Ninety-seven of said bonds of the denomination of one thousand dollars each, designated by the numbers 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 161, 162, 163, 164, 165, 166, 167, 168, 168, 170, 171, 172, 173, 174, 175, 176, 177, 178, 198, 199, 342, 343, 344, 345, 346, 354, 355, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, & 400; also sixteen of said bonds of the denomination of five hundred dollars each, designated by the numbers 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116.

And your orators further show that on the 1st of January, 1878, an installment of interest for the six preceding months became due and payable upon each of the said bonds so held by them respectively
24 as aforesaid, and likewise, as your orators are informed and believe, upon all the aforesaid outstanding bonds, and that no part of said interest has been paid. That more than six months having elapsed since default was made in the payment of said January interest, and said default, which is here alleged, having continued for more than six months, the whole principal sum mentioned in all of said outstanding bonds has become due and payable, and your orators, and the other holders of the bonds of said company entitled to have their lien enforced by the foreclosure of the mortgage executed as aforesaid to secure the payment of the principal and interest of said bonds.

Orators further show that, as they are informed and believe, defendants, S. M. Rice & R. L. Coleman, partners under the name and style of Rice & Coleman, J. E. Fry & J. A. Deal, partners, under the name and style of Fry & Deal, E. Clayton & Sons, and John Garrison, respectively, claim to have some interest in or
25 lien upon portions of the property embraced by said mortgage, and lying in the State of North Carolina, and that the said defendants have instituted proceedings in the State courts of North Carolina for the purpose of enforcing their pretended claims against said property; but the nature of said proceedings is to your orators unknown, nor are your orators fully apprised as to the character of the claims made by said defendants.

Orators state, upon information and belief, that each and all of said defendants were contractors, to whom the Spartanburg & Asheville Railroad Company let contracts for work on said road; that the contract of E. Clayton & Sons and S. M. Rice & R. L. Coleman, part-

ners under the name & style of Rice & Coleman, and perhaps of John Garrison, was for grading; and J. E. Fry & J. A. Deal, partners under the name & style of Fry & Deal, for bridge or tressel building; that said contractors entered upon and performed their several contracts,
recognizing the sight of said railroad company to let said con-
26 tracts and with full knowledge of the existance of said mortgage
and the object of its execution, and the issuance and negotiation of said bonds, as hereinbefore stated. That the contracts of said defendants were long since completed, and no notice given orators, or, so far as orators are informed, any other of the holders of said bonds, of any claim of interest in or lien upon any portion of said railroad or said railroad company's property. That said S. M. Rice & R. L. Coleman, partners under the name & style of Rice & Coleman, claimes and are seeking to enforce title to about one mile of the right of way or graded road-bed of said railroad company under a pretended purchase from the party who owned the land at the time said railroad company entered thereon, layed out, and began the construction of and actually, with let or hindrance, graded said
27 road, and who did not attempt to part with title to said defendants untill long after they, as contractors employed by said railroad company, did, for and in behalf of said company, do said grading. That E. Clayton and sons, under like circumstances, claim title to about two miles of completed road, together with the superstructure thereon, and are seeking to enforce such title, and, too, after, as stockholders in said company, voting for the issuance of said bonds and, as contractors in the employ of said company, completing for said company the grading over the land now claimed to be owned by them under some pretended purchase from the former owner. That said J. E. Fry & J. A. Deal, partners under the name & style of Fry and Deal, are seeking to enforce a mechanics' and laborers' lien on one or more tressels of said road, upon which the superstructure
is erected, and which is an absolutely necessary portion of said
28 railroad. That said John Garrison is seeking to enforce some
pretended lien against some portion of said road lying in the western district of North Carolina, but the particular portion and the county in which it is located are to your orators unknown.

Orators further show that, whatever the character of the lien claimed by said defendants, or any of them, they are not entitled to have them enforced as against the rights of orators and other holders of said bonds, such claims, if any, said defendants have, being subsequent in date to said mortgage and subject thereto, and to the lien and claim of your orators and the other holders of said bonds upon the property covered by said mortgage.

Orators also show that prior to the purchase or pretended purchase by the defendants, or any of them, of the land over which
said road extends, said defendants performed the work for
29 which they claim a lien on said property as the property of
the Spartanburg & Ashoville Railroad Company, and very recently upon the failure of said company to pay them for said work, wrongfully and fraudulently and for a trifling consideration, procured or claim to have procured title to portions of

said roadway, and with full knowledge of the invalidity of such a title, but with the design of interfering inequitably and fraudulently with the rights of your orators and the other bondholders under said mortgage, said defendants have brought suits which, if not enjoined from their further prosecution, will work great damage to said railroad corporation and prejudice the rights of your orators and other holders of said bonds. That the amount claimed or demanded by said contractors is sixty thousand dollars or other like sum, the collection of which they are seeking
30 to enforce as aforesaid upon portions of said road lying in the counties of Polk and Henderson, in said State of North Carolina.

Orators further show that said road, with all its appurtenances, is in its mature and entirety, that its unity and continuity are amongst the most, if not the most important elements of its value, and that to separate any portion of it therefrom would greatly impair the value of the whole, and would work irreparable injury to your orators and the other holders of said bonds. That even if said contractors have their liens and rights claimed by them, which is denied by orators, it would be grossly inequitable to allow their enforcement in the way and manner they are seeking such enforcement. That all their rights are properly cognizable and can be determined by this court, and that in no other way can the rights of all
31 parties be preserved and enforced.

Orators further show that in addition to said contractors there are other creditors of said Spartanburg and Asheville Railroad Company, who claim from said company one hundred thousand dollars or other large sums for work done and material furnished said company, but who do not, in so far as orators are informed and believe, claim any line, and are not seeking the enforcement of any lien or claim against said company or its property. As to them your orators pray no relief or process, but ask that should it become necessary their names, with the names of all other persons having any interest in the subject-matter of this suit, when discovered, may be inserted herein with apt and proper words to charge them as parties hereto.

Orators further show that said Spartanburg and Asheville
32 railroad, having completed some forty-three miles of said road and graded a considerable portion of the remainder thereof, and having on hand iron, subject to said mortgage, with which to complete about two miles more of said road and reach an important station, is now insolvent and utterly unable to proceed with the work of completing said road, or any part thereof. That it has no rolling-stock or any other property except its said road and its appurtenances, and that said road is being operated by the Spartanburg, Union & Columbia Railroad Company, under some contract or agreement, the terms of which are to your orators unknown, but which, as your orators are informed, are such as to make it probable that all operations on said road will be suspended if
33 said contracting creditors are allowed to proceed in said State courts with their claims, or pretended claims. That said

Spartanburg, Union and Columbia Railroad Company has been engaged in the work of laying and extending the track of said Spartanburg & Asheville Railroad, but that such work has been stop-ed by the action of said contractors, and with iron on hand with which two miles more of track might be laid and an important station reached, and the value of said road greatly increased, the work has been suspended.

Orators further show, that while they have no knowledge whether or not the trustees in said mortgage named have been requested in writing to take charge of and sell said road, as provided in said mortgage, the action of said contractors, and the condition of
34 said Spartanburg & Asheville Railroad Company, make it necessary for the protection of your orators and the other holders of said bonds, that a receiver should be appointed who shall have authority to complete said road to the extent of the iron on hand. That said contractors should be enjoined from in any manner interfering with the progress of said work, or the operation of said road, and compelled to come into a court of equity, there to have their rights determined and adjudicated. That each and all the officers and agents of said Spartanburg and Asheville Railroad Company should be enjoined from the disposition of any of the property of said company, and from doing any act or *and* which shall increase the risk or affect the security of orators and the other holders of said bonds, and that upon the determination and adjudication
35 of the rights of each and all of the parties at interest, a sale of said road and the property described in said mortgage should be ordered to be made either by said trustees or by the receiver, under such restrictions and upon such terms as to the court may seem mete and proper, and that the fund arising from the sale be distributed under the direction of the court. Orators, therefore, pray waiver of answer from the defendants, of any of them, under oath, being made, that the said trustees in said mortgage or trust deed named may be required to take possession of and sell the whole trust property thereby conveyed for the purpose of paying off the principal as well as the interest due upon or secured by said bonds, and that in selling said railroad they sell the same as
36 an entirety, with its franchises, lands, buildings, appurtenances, materials, and other property connected therewith or occupied by said company and necessary to its unity and continuous operation and as provided in said mortgage, and that the fund arising from such sale be distributed under the direction of this court.

That the said Spartanburg and Asheville Railroad Company may be compelled to deliver to them the possession of said railroad and its appurtenances, and said other property for that purpose. And that it may be adjudged and decreed that any such sale and a conveyance by virtue thereof of the said railroad and its appurtenances, and other property, will communicate to the purchaser thereof a good and absolute title to the same, free and clear
37 of all claim on the part of the said J. E. Fry & J. A. Deal,

partners under the name and style of Fry & Deal, S. M. Rice & R. L. Coleman, partners under the name and style of Rice & Coleman, E. Clayton & Sons, John Garrison or other creditors, and of all persons claiming by, from, or under them, or either of them.

Orators further pray that, pending this suit, some suitable person may be appointed by this court receiver to take *the* possession of the said Spartanburg & Asheville railroad and its appurtenances, and the other property granted and conveyed or embraced by said mortgage with the usual powers of receivers in such cases, and with power to ma'ge and operate said railroad, to complete the laying of the iron on hand, and receive all of the earnings and income of said railroad during the pending of this suit, and with such other powers as to this court shall seem right and proper, including the
38 right of sale for the purpose hereinbefore mentioned if in the discretion of the court it should be deemed advisable to deny such right to said trustees and confer it upon said receiver. And that your orators may have such other or further relief in the premises as to this court shall seem proper and equitable.

And your orators pray that a temporary injunction may be granted herein, and directed to the said Spartanburg and Ashville Railroad Company, its officers, agents, and attorneys, and to said J. E. Fry and J. A. Deal, partners, under the name and style of Fry & Deal, E. Clayton & Sons, S. M. Rice and R. L. Coleman, partners, under the name and style of Rice & Coleman, and John Garrison, their respective agents and attorneys, enjoining and restraining them from taking any steps or doing any act towards the enforcement of any actual or pretended lien or claim which the latter parties,
39 said contractors, claim to have upon any portion of said Spartanburg & Ashville railroad, either by reason of the purchase or pretended purchase of any portion of the right of way of said road, or as contractors for building any portion of said road; and further enjoining and restraining the said Spartanburg & Ashville Railroad Company, its officers, agents, or attorneys, from delivering possession of said railroad, or its appurtenances, or any part thereof, or any of the other property of the said company, either that to which said company has a full and complete right and title, or that to which it has only an inchoate right and title, or an equitable interest therein, to any person except a receiver appointed by the court in this suit, or to said trustees, upon the order
40 of this court; and from doing or suffering any act or thing whatsoever which shall promote such delivery, or in anywise affect the present status of your orators and impair their security.

And may it please the court to grant unto your orators a writ of subpœna, to be issued out of and under the seal of this court, and directed to the said The Spartanburg & Ashville Railroad Company, William H. Inman, John B. Cleveland, J. E. Fry & J. A. Deal, S. M. Rice & R. L. Coleman, E. Clayton and John Garrison, commanding them and each of them, at a certain day and under a certain penalty therein to be inserted, personally to be and appear before this court, and then and there to answer the premises and to stand to and abide

by and perform such order, direction, or decree as shall be
41 made therein. And your orators will every pray, &c.

V. R. TOMMEY,
Atlanta Rolling Mill Co.
By V. R. TOMMEY,
President.

CANDLER & THOMPSON & BYNUM,
Complainants' Sol'rs.

You, Vincent R. Tommey, do solemnly swear that what is contained in your foregoing bill, as far as concerns your own act ordered, is true of your own knowledge; and that which relates to the act or deed of any other persons, you believe to be true.

V. R. TOMMEY.

Sworn to and subscribed before me, this October 22d, 1878.
[SEAL.] EDW'D S. McCANDLESS,
Not. Pub.

42 "EXHIBIT A."

This indenture, made this first day of October, in the year of our Lord one thousand eight hundred and seventy-six, between the Spartanburg and Ashville Railroad Company, party hereto of the first part, and William H. Inman and John B. Cleveland, trustees, party hereto of the second part, witness: The said party of the first part is a corporation duly formed, organized, and existing according to law for the purpose of constructing, maintaining, and operating a railroad in the States of South Carolina and North Carolina, with full power to borrow money and to create a lien on its property and line of railway;

And whereas it is estimated that the sum of ten thousand dollars per mile will be amply sufficient to complete the whole line
43 of said railroad from the town of Spartanburg, in South Carolina, to the town of Asheville, in North Carolina, making a distance of sixty-seven miles, more or less;

And whereas the stockholders, in general meeting assembled, after due notice given as required by law, did determine and agree that the maximum of the first mortgage lein on their line of road should not exceed the aforesaid sum of ten thousand dollars per mile;

And whereas the stockholders of the said Spartanburg and Asheville railroad, did, in general meeting assembled, in the town of Hendersonville, in the State of North Carolina, to wit, at the regular annual meeting of said stockholders, on the ninth day of August, A. D. 1876, authorize, instruct, and fully empower their president and board of directors of said company to issue bonds
44 of the said company, payable at such time as may *as may* be prescribed by said president and board, to bear interest at the rate of seven per cent. per annum, and not to exceed the amount of ten thousand dollars per mile of said railroad, and that for the purpose of securing the payment of the said bonds and the interest

on the same as it may become due, the said president and directors are authorized, empowered, and instructed to create a first mortgage on the entire property of the said Spartanburg and Asheville railroad, including all rights, privileges, immunities, and franchises, together with rights of foreclosure for non-performance or failure of the said Spartanbhrg and Asheville Railroad Company to comply with the provisions of said mortgage;

And whereas the said board of directors of the said Spar-
45 tanburg and Asheville Railroad Company, in pursuance of and under the full powers vested in them as aforesaid by the said stockholders in general meeting as aforesaid assembled, did determine and resolve to issue first mortgrge bonds of said company, not to exceed the sum of ten thousand dollars per mile of their said railroad, to bear interest at the rate of seven per centum per annum, payable semi-annually, and which bonds shall run to maturity in twenty years.

And whereas the said president of the said company was duly instructed, authorized, and impowered to take all necssary steps, and to do all necessary acts, to carry into effect the purposes and objects aforesaid, as contemplated by the said stockholders and board of directors in their resolutions, on the said ninth day of August, A. D. 1876, at the town of Hendersonville, in the State of North
46 Carolina as aforesaid. And whereas, under and in pursuance of the powers and authority above mentioned and vested as aforesaid, the Spartanburg and Asheville Railroad Company, the party of the first part, has determined to make, issue, and negotiate and deliver, under its corporate seal, its first-mortgage bonds, bearing even date herewith, payable *payable* severally to the bearer thereof, on the first day of January, A. D. one thousand eight hundred and ninety-seven, in gold coin of the United States, with semi-annual interest, at the rate of seven per centum per annum, in gold coin of the United State, being in all eleven hundred of said bonds, as follows: Four hundred for one thousand dollars each, five hundred for five hundred dollars each, and two hundred for one hundred dollars each, amounting in the aggregate to six hundred and sev-
47 enty thousand dollars, and no more; and that for the purpose of a more specific indentification thereof, the said eleven hundred bonds shall be numbered as follows: The said four hundred, for one thouand dollars each, to be numbered from one to four hundred, both inclusive; the said five hundred, for five hundred dollars each, to be numbered from one to five hundred, both inclusive, and the two hundred, for one hundred dollars each, to be numbered from one to two hundred, both inclusive; and that upon each of said bonds shall be printed or engraved a certificate signed by the said William H. Inman and the said John B. Cleveland, the party of the second part hereto, trustees.

Each of said bonds to be in the form following:

"UNITED STATES OF AMERICA."

State of South Carolina.

First mortgage seven per cent. gold bonds, Spartanburg and Asheville Railroad Company, secured by mortgage of its railroad,
48 appurtenances, and franchises.

Know all men by these presents, that The Spartanburg and Asheville Railroad Company is indebted to the bearer hereof in the sum of —— dollars, gold coin of the United States, which the said company promises to pay to the said bearer hereof, on the first day of January, in the year one thousand eight hundred and ninety-seven, at its office or agency in the city of Charleston, So. Ca., or in the city of New York, for value received, with interest thereon at the rate of seven per centum per annum in gold coin, payable semi-annually on the first day of January and July of each year, at either of the said places, at the option of the holder, upon the presentation and surrender of the annexed coupons, as they severally become due. This bond is one of a series of eleven hundred bonds, four hundred for one thousand dollars each, five hundred for five hundred
49 *for five hundred* dollars each, and two hundred for one hundred dollars each, of like tenor and date, the three denominations being numbered respectively from 1 to 400, from 1 to 500, and from 1 to 200, and amounting in the aggregate to the sum of six hundred and seventy thousand dollars, and the payment of which is secured by a deed of mortgage of the said company, bearing date the first day of October, in the year one thousand eight hundred and seventy-six, duly executed and delivered by the said Spartanburg and Asheville Railroad Company to William H. Inman, of the city of New York, and John B. Cleaveland, of the State of South Carolina, trustees, and conveying thereby to them and their successors in trust the said railroad, its lands, tolls, fares, revenue, present and future property and effects, franchises, and appurtenances. This bond shall not become obligatory unless it shall have been coun-
50 tersigned by the said trustees or their successors in the trust.

In witness whereof, the said company has caused its corporate seal to be hereto affixed and the same to be attested by the signature of its president and secretary and treasnrer, and has caused coupons, hereto annexed, to be endorsed by the signature of its secretary and treasurer, this the first day of October, in the year of our Lord one thousand eight hundred and seventy-six.

——— ———, *President.*

——— ———, *Secretary & Treasurer.*

——— ———,

——— ———,

Trustees.

Coupons.

The Spartanburg and Asheville Railroad Company will pay the bearer, at its agency in the city of New York, or in the city of Charleston, as he may elect, ——, being six months' interest on bond No. —.

_____ _____,
Sec'ty & Treasurer.

Trustees' Certificate.

51 We, William H. Inman and John B. Cleveland, trustees, do hereby certify that the within bond is one of a series of bonds of like amount, aggregating ——— dollars, the payment of which is secured by a mortgage to us, bearing date the first day of October, 1876. That the said mortgage is a first lien upon the line of the said company's road, and that no more of said bonds of this denomination will be countersigned or certified by us than —— hundred.

_____ _____,
_____ _____,
Trustees.

Now, therefore, this indenture witnesseth, that the Spartanburg and Asheville Railroad Company, party hereto of the first part, for and in consideration of the premises and of the sum of one dollar to it in hand paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and in order to secure the payment of
52 the *payment of the* principal and interest of said bonds to be issued as aforesaid, according to the tenor and effect thereof, and of the coupons thereto annexed, has granted, bargained, sold, and by these presents does grant, bargain, sell, convey, and transfer unto the said party of the second part, and to their successors or legal representatives of said trustees, all and singular the railroad of the said party of the first part, to be constructed, and now being constructed, from the town of Spartanburg, in South Carolina, to the town of Asheville, in North Carolina, being a distance of sixty-seven miles, more or less, together with all its track and road-bed, and depot lands, its tenements and hereditaments, rights of way and easements, acquired or appropriated, or what shall hereafter be acquired or appropriated, for the purpose of a single or double or other
53 track railroad and telegraph line, and for depots, engine-houses, warehouses, machine shops, superstructure erections, and fixtures being necessary for the use of said railroad, and also all and singular the franchises owned, possessed, or acquired, or which shall hereafter be owned, possessed or acquired, by said party of the first part, for the purpose of building and operating the said railroad above specified and described; and also all the rails, depot yards, engine-houses, machine-shops, car-houses, station-houses, iron-houses, work-shops, and fixtures of the said party of the first part; and including also all locomotives, cars, tenders, and other rolling-stock or equipments, and all machinery, tools, implements, fuel and other materials for constructing, operating, and repairing the said railroad.

To have and to hold the above described railroad and
54 premises, and all and singular the rights, franchises, lands, and property, real and personal, hereby granted or intended so to be, unto the said party hereto of the second part, and to their successors or legal representatives of said trustees forever, in trust for the person or persons, firm or firms, bodies politic, or corporate, who have heretofore, or who shall hereafter at any time become the purchasers or holders, or owners, of any or either of said bonds so to be issued as aforesaid, and subject to the terms, provisions, and conditions in said bonds contained, and also subject to the possession and management of said railroad and property by the said party of the first part and its assigns, so long as no default shall be made in the payment of either the interest or principal of said bonds so to be issued, or any of them, and so long as said party of the first part shall well and truly observe, keep, and perform, all and sin-
55 gular the covenants, agreements, conditions, and stipulations in said bonds, and in this indenture contained and set forth, and which are to be observed, kept, and performed by and on the part of the said party of the first part.

Provided, always, and these presents are upon the express condition that if the said party of the first part shall well and truly pay or cause to be paid to the holders of the said first mortgage bonds, and every of them, the principal sums of money therein mentioned, according to the true intent and meaning thereof, with the interest thereon at the time and in the manner as therein provided according to the true intent and meaning of these presents, then, and in that case, the estate, right, title, and interest of said party of the second part and their successors or legal representatives in the trust hereby created shall cease, determine, and become void,
56 otherwise to remain in full force and virtue; and it is further witnessed by this indenture that the Spartanburg and Asheville Railroad Company, party of the first part, covenants and agrees to and with the said party of the second part that the said company will pay or cause to be paid all taxes levied and assessments imposed or which may hereafter be imposed, assessed, or levied upon the premises, franchises, and property hereby mortgaged, and shall and will at its own proper cost, charges, and expense do, or cause to be done, all the acts and things necessary to be done in order to preserve and keep valid and intact the incumbrance or lien upon all and singular the aforesaid property and franchises hereby created, and further, that the said party of the first part shall not and
57 will not at any time hereafter or in any way or manner interfere or avail itself of any extension laws, appraisement laws, or any other laws of the State of South Carolina or North Carolina now in force or hereafter to be enacted or in force in said States, which would alter, impair, or which are or may be designed or construed to alter, effect, or change the rights and interests of the said parties of the second part as herein declared, or which shall in any way impede or obstruct the mode of realizing, perfecting, or enforcing the rights and interest of any of the owners or holders of said bonds so to be issued as aforesaid, or which shall effect, change,

or alter the time, place, mode, means, or manner of perfecting, enjoying, or enforcing any of such rights or interests as the same is herein declared, and also that said party of the first part shall
58 and will at any time or times hereafter execute, acknowledge, and deliver to the said party of the second part and their successors or legal representatives all such other and further assurances, deeds, mortgages, and instruments in writing and shall and will do and perform all such other acts and things as shall or may be necessary or proper or as their counsel learned in the law shall deem necessary or expedient for the better or more effectually securing upon its above mortgaged premises the payment of the said bonds so to be issued, and the interest due and to prove due thereon or for carrying into effect the true intent, design, objects, and purposes of these presents or making, preserving, continuing, keeping valid and effectual the lien and incumbrance created or intended to be created by the execution, delivery, or recording of this indenture upon the property, real and personal, rolling stock, equipments, franchises, and effects herein particulary described.
59 And this indenture further witnesseth that the said party of the first part, by these presents, further covenants and agrees to and with the said party of the second part, or their successors or legal representatives, in manner and form following, that is to say:

1st. That the Spartanburg and Asheville Railroad Company, first party hereto, shall and will well and truly pay, or cause to be paid, the said sums of money secured in and by said bonds so to be issued as herein provided, together with the semi-annual interest to become due thereon, at the rate of seven per centum per annum, in gold coin, at the times, in the man-er, and at the places specified therein, respectively.

2nd. That no greater amount of bonds shall be issued under the provisions of this deed than ten thousand dollars for every mile of said described railroad, and which, when issued, will aggregate the sum of six hundred and seventy thousand dollars, and that
60 this mortgage is the first mortgage or lien of any kind whatever upon said railroad.

3rd. That if default shall be made in the payment of any of the semi-annual interest due upon said bonds, or upon either or any of them, and said default shall continue for six months thereafter, then, after the lapse of six months, the whole principal sum mentioned in each and all of the said eleven hundred bonds shall forthwith be and become due and payable; or if default be made in the payment of the principal of said bonds, or either of them, and in either of said cases the lien or incumbrance created hereby may be immediately enforced; and that it shall and may be lawful for said party of the second part, and they are hereby expressly authorized and empowered, upon the request in writing of the holders of a majority in amount of the said bonds, to enter upon and take possession
61 of said railroad and premises, real and personal, hereby conveyed, or intended so to be, and make sale of said railroad premises and appurtenances, and of all benefit and equity of redemption and legal and equitable right of the said party of the first part

hereto, at public auction, giving reasonable and public notice of the time and place of such sale by advertisement in the public newspapers; and the said party of the second part, as the attorney of the party hereto of the first part, duly authorized, constituted, and appointed for that purpose by these presents, may make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance for the same, and out of the proceeds of said sales, after first deducting the expences, costs, and counsel fees, together with the charges and fees of the said party of the second
62 part, incurred in and about the conducting of said sale, shall pay said first mortgage bonds, or so many of them as shall be outstanding, with all arrears of interest then due or owing upon the same, rendering the overplus of said money, if any there be, unto the said party of the first part, which sale shall forever be a perpetual bar both in law and in equity against the said party of the first part, its successors and assigns, and all other persons claiming, or to claim, the premises or any part thereof by, from, or under it.

And this indenture further witnesseth, and it is expressly agreed, that upon the death, the resignation, or removal by any courts of competent jurisdiction, for incapacity or inability to execute any of the trusts aforesaid, or either one or both of the party of the second part, then it shall be the duty of the party of the first part
63 forthwith to appoint by and with the advice and consent of a judge of the supreme court of the State of New York, a competent — or party to fill the vacancy thus created, evidence of which appointment under the seal of said supreme court and the seal of the said company shall be filed without delay in the office of the secretary of State of South Carolina and North Carolina, and the person or party so appointed as trustee, on his acceptance of such appointment, shall have and possess the same rights and powers as trustee as he would have had had he been originally made a party of the second part hereof, and shall perform the same duties in all respects, and his acts in the premises shall be as legal, valid, and effectual in all respects as if the same had been done by the original party hereto of the second part.

In witness whereof the said Spartanburg and Asheville
64 Railroad Company, the party hereto of the first part, has caused its corporate seal to be hereto affixed, and the same to be attested by the signatures of its president and secretary and treasurer, and the said party of the second part have caused their signatures and seals to be hereto affixed to evidence their acceptance of the trusts hereby created the day and year first above written.

THE SPARTANBURG AND ASHEVILLE
RAILROAD COMPANY.
By D. R. DUNCAN, *President.*
[L. S.] WM. K. BLAKE,
Secretary and Treasurer.
WM. H. INMAN, [SEAL.]
JOHN B. CLEVELAND, [SEAL.]
Trustees.

Signed, sealed and delivered in the presence of G. Cannon, Geo. Cofield.

THOS. B. JETER, [SEAL.]
JOHN L. WILEY, [SEAL.]
Directors.

STATE OF SOUTH CAROLINA, *Spartanburg County:*

65 Personally appeared before me, Geo. Cofield, and made oath that he saw the within named D. R. Duncan, president of the Spartanburg & Asheville Railroad Company, and the within named Wm. H. Inman and John B. Cleveland, trustees, sign, and as their act, and *and* deliver the within deed of trust, and that -he within G. Cannon witnessed the execution thereof.

GEO. COFIELD.

Sworn before me this 20th June, 1877.
[SEAL.] F. M. FREESIMIR,
Clk of Court.

SPARTANBURG, S. C., CLERK'S OFFICE, *June 20th*, 1877.

Recorded in Mortgage Book E, page 538 & 544 inclusive, and certified by

F. M. FREESIMIR, *Clerk & R. M. C.*

Filed June 20th, 1877.

F. M. FREESIMIR, *R. M. C.*

STATE OF SOUTH CAROLINA, *Spartanburg County:*

On this the 30th day of November, A. D. 1877, before me
66 Geo. W. Nichols, a commissioner appointed by the Governor of the State of North Carolina in and for the State of South Carolina, personally come D. R. Duncan, president of the Spartanburg and Asheville Railroad Company, grantor named in the foregoing deed, and the said deed being likewise produced and exhibited before me, the said D. R. Duncan, president as aforesaid, acknowledged the due execution thereof by him as his act or deed for the use and purpose therein expressed.

In witness whereof I have hereto set my hand and affixed my official seal this the day and year above writ-en.

[SEAL.] GEO. W. NICHOLLS,
Commissioner for North Carolina in South Carolina.

REGISTER'S OFFICE.

NORTH CAROLINA, *Henderson County:*

The foregoing mortgage filed for registration Jan'y 12th,
67 1878, and registered Jan'y 14, 1878, in this office. Book No. 1. Mortgage record on pages 87 to 98 inclusive. Certified Jan'y 14th, A. D. 1878.

D. STRADLY,
Register of Deeds for Henderson County, North Carolina.

REGISTER'S OFFICE.

NORTH CAROLINA, *Buncombe County:*

The within deed was filed in said office January 21st, 1878 A. D., 10 o'clock a. m., and duly registered in book No. 38, pages 433, 434, 435, 436, 437, 438, 439, 440, 441, & 442, records of said office.

J. R. PATTERSON,
Register of Deeds for Buncomb- County, N. C.

JAN'Y 21*st*, 1878.

BUNCOMBE COUNTY, *in the Probate Court:*

This day was duly exhibited before me the within deed and the foregoing certificate endorsed thereon, of Geo. W. Nicholls, commissioner for North Carolina in South Carolina, that D. R.
68 Duncan, the grantor named in the deed, acknowledged before said commissioner the due execution of it by him, the said grantor, as his act and deed for the use and purposes therein expressed, and the said certificate dated 30th day of November, A. D. 1877, (to which reference is hereby made,) appearing to be duly made, and it therefore appearing that said deed has been duly acknowledged as aforesaid, I do hereby adjudge said certificate to be correct and in due form, and that the execution of said deed has been duly acknowledged by said grantor therein as aforesaid. Let this certificate and said deed and certificate be registered.

E. W. HERNDON,
Judge of Probate.

STATE OF SOUTH CAROLINA, *Spartanburg County:*

This the 28th day of September, 1878, before me, Geo. W. Nicholls, a commissioner appointed by the State of North Carolina, in
69 and for the State of South Carolina, to take the acknowledgement of deeds & mortgages for registration in the State of North Carolina, personally appeared Gabriel Cannon, to me personally known, who, by me being duly sworn according to law, says: That he knows the common seal of the Spartanburg and Asheville Railroad Company, and that he is acquainted with D. R. Duncan, president of said company, & with Thos. B. Jeter and John L. Wiley, the two other directors, members thereof; that he, the said Gabriel Cannon, saw the said D. R. Duncan, president as aforesaid, affix said seal to the above deed of mortgage executed by the said railroad company to Wm. H. Inman & Jno. B. Cleveland, trustees, for the purposes therein mentioned, and also saw the said D. R. Duncan and the said Thos. B. Jeter & John L. Wiley sign the deed, the said deed having been exhibited before me; that the said Gabriel
70 Cannon became a subscribing witness in the presence of the grantors.

G. CANNON.

Subscribed and sworn to before me.

In witness whereof, I have hereunto set my hand affixed my official seal, the day and year above named.

[SEAL.] GEO. W. NICHOLLS,
Commissioner for North Carolina in South Carolina.

STATE OF NORTH CAROLINA, *Polk County:*

PROBATE JUDGE'S OFFICE.

It appearing to the satisfaction of the court here that the foregoing deed of mortgage was duly probated before Geo. W. Nicholls, of Spartanburg, South Carolina, a commissioner of deeds for the State of North Carolina, it is ordered by the court that said deed, together with this certificate, be registered.

R. S. ABRAMS,
Judge of Probate.

71 Filed for registration on the 30th day of September, 1878, and registered in the register's office, Polk county, September 30th, 1878, in book 5, pages 55, 6, 7, 8, 9, 60, 61, 62, 63, 64, 65–67.

JAMES N. COINS,
Register of Deeds for Polk County, N. C.

POLK COUNTY, N. C., REGISTER'S OFFICE.

The within deed and certificate presented in my office for registration on 30 day of September, 1878, and duly registered in book No. 5. pages 55, 6, 7, 8, 9, 60, 61, 62, 63, 64, 65–67.

JAMES N. COINS,
Reg'r of Deeds.

STATE OF NORTH CAROLINA, *Henderson County:*

PROBATE JUDGE'S OFFICE, *October 1st*, 1878.

It appearing to the satisfaction of the court here that the foregoing deed of mortgage was duly probated before Geo. W. Nicholls, of Spartanburg, South Carolina, a commissioner of deeds for
72 the State of North Carolina, it is ordered by this court that the said deed, together with this certificate, be registered.

C. M. PACE,
C. S. C. and Judge of Probate.

NORTH CAROLINA, *Henderson County:*

REGISTER'S OFFICE.

The foregoing mortgage presented for registration in my office on first day of Oct. 1878, at 8 o'clock p. m., & duly registered in book No. 1 Mortgage Records, pages 197 to 208 inclusive.

D. STRADLEY,
Register of Deeds.

STATE OF NORTH CAROLINA, *Buncombe County:*

PROBATE JUDGE'S OFFICE.

It appearing to the satisfaction of the court here that the foregoing of mortgage deed was duly acknowledged before Geo. W. Nicholls, of Spartanburg, South Carolina, a commissioner of deeds for the State of North Carolina, it is ordered that said deed, together with this certificate be registered, this 3rd of October, 1878.

E. W. HERNDON,
Probate Judge.

73 NORTH CAROLINA, *Buncombe County:*

REGISTER'S OFFICE.

The foregoing mortgage presented to this office for registration on the 3rd day of October, 1878, at nine o'clock a. m., & duly regin book No. 1, Record of Mortgages, pages 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, & 209.

J. R. PATTERSON, *Register.*

74 On the day and year aforesaid, to wit, October 26th, A. D. 1878, the plaintiffs filed in our said court their prosecution bond, in the words and figures as follows, to wit:

75 *Prosecution Bond.*

UNITED STATES OF AMERICA, *Western District of North Carolina:*

Circuit Court, 4th Circuit.

V. R. TOMMEY and ATLANTA ROLLING MILL CO.
vs.
SPARTANBURG & ASHEVILLE R. R. Co. and others.

Know all men by these presents, that we, V. R. Tommey, and Atlanta Rolling Mill Co., principal, and R. Y. McAden, sureties, are held and firmly bound unto the defendants in the above-entitled action in the sum of three hundred dollars, to the payment of which we bind ourselves firmly by these presents.

Sealed with our seals, and dated the 26th day of Oct., 1878.

The condition of the above obligation is such, that whereas the said Tommey & Atlanta Rolling Mill Co., plaintiffs in the above-entitled cause, have this day brought an action against the defendants therein: Now, if the said plaintiffs shall prosecute said action with effect, or, in case they fail therein, shall well and truly pay the said defendanls all such costs and damages as shall be awarded or recorded against the said plaintiffs, then the above obligation
76 to be void; otherwise, to remain in full force and effect.

V. R. TOMMEY &
ATLANTA ROLLING MILL CO.,
P'r BYNUM, *Attorney.*
R. Y. McADEN. [SEAL.]

Taken and acknowledged before me, this 26th day of October, 1878.
H. C. COWLES, *Clerk,*
By JOSIAH D. COWLES, *Deputy Clerk.*

77 And on the day and year aforesaid, to wit, October 26th, A. D. 1878, the following notices of an application for an injunction and the appointment of a receiver were issued out of our said court, to wit:

78 Circuit Court of the United States, Western District of North Carolina. In Equity.

VINCENT R. TOMMEY & ATLANTA ROLLING MILLS CO.
vs.
THE SPARTANBURG & ASHEVILLE RAILROAD COMPANY, &c.

To D. R. Duncan, president of the Spartanburg Railroad Co., defendant:

SIR: You are notified that on Tuesday after the second Monday in December, 1878, being the term of said court, to be then held in the city of Charlotte, in said western district, the plaintiffs in the above-entitled cause will apply to the judges of said court in said city of Charlotte for an injunction & the appointment of a receiver, & such other relief as is demanded in the bill filed in said cause.

Oct. 26, 1878.

V. R. TOMMEY &
ATLANTA ROLLING MILLS CO.,
By W. P. BYNUM, *Atto.*

79 Circuit Court of the United States, Western District of North Carolina.

VINCENT R. TOMMEY & ATLANTA ROLLING MILLS CO., Pl'ffs,
vs.
SPARTANBURG & ASHEVILLE RAILROAD COMPANY *et al.*, D'f'ts.

To JOHN B. CLEVELAND & W. H. INMAN,
Trustees, &c., D'f'ts in said Cause.

SIRS: You are notified that on Tuesday after the second Monday in December, 1878, being the week of the term of said court to be then held in the city of Charlotte, in and for said western district, the plaintiffs in the above-entitled cause will apply to the judges of said court in said city of Charlotte, for an injunction, the appointment of a receiver, and such other relief as may be demanded in the bill filed in said cause.

Oct. 26, 1878.

V. R. TOMMEY &
ATLANTA ROLLING MILLS CO.,
P'r W. P. BYNUM, *Atto.*

80 Circuit Court of the United States, Western District of North Carolina. In Equity.

TOMMEY & ATLANTA ROLLING MILLS CO., Pl'ffs,
vs.
SPARTANBURG & ASHEVILLE RAILROAD CO. *et al.*, D'f'ts.

EPHRAIM CLAYTON, Esq.

SIR: You are notified that on the first Tuesday after the 2d Monday in December, 1878, the plaintiffs will apply to the judges of said court in the above-entitled cause at Charlotte, in said district, being the term of said court, then to be held for the appointment

of a receiver of the d'f't road, and for an injunction and other relief demanded in the bill of complaint filed in said court. As you are a defendant you can attend if you see proper.

Oct. 26, 1878.

TOMMEY *et al., Pl'ffs,*
By BYNUM, *Atto. for Pl'ff'-.*

81 Circuit Court of the United States, Western District of North Carolina. In Equity.

V. C. TOMMEY & ATLANTA ROLLING MILLS Co., Pl'ffs,

vs.

SPARTANBURG & ASHEVILLE RAILROAD Co. and others, D'f'ts.

JOHN GARRISON.

SIR: You are notified that on the first Tuesday after 2d Monday in December, 1878, the pl'ffs in the above-entitled cause will apply to the judges of said court at Charlotte, N. C., being the term of said court then to be held, for an injunction and the appointment of a receiver of said d'f't road and other relief as is demanded in the bill of complaint filed in said court. You are a defendant, and can attend if you see proper.

Oct. 26, 1878.

TOMMEY & ATLANTA ROLLING MILLS, *Pl'ffs,*
By BYNUM, *Atto. for Pl'ffs.*

82 Circuit Court of the United States, Western District of North Carolina. In Equity.

V. R. TOMMEY and ATLANTA ROLLING MILLS COMPANY, Pl'ffs,

vs.

SPARTANBURG AND ASHEVILLE RAILROAD Co. & others, Def'ts.

Mess. J. E. FRY & J. A. DEAL, partners under the name & style of Fry & Deal.

SIRS: You are notified that on the first Tuesday after the second Monday in December, 1878, the plaintiffs in the above-entitled cause will apply to the judge of said court at Charlotte, N. C., being the term of said court then to be held, for an injunction and the appointment of a receiver of said defendant road, and other relief as is demanded in the bill of complaint filed in said court. You are defendants, and can attend if you see proper.

Oct. 26th, 1878.

TOMMEY & ATLANTA ROLLING MILLS CO., *Pl'ffs,*
By BYNUM, *Their Atto.*

83 Circuit Court of the United States, Western District of North Carolina. In Equity.

V. R. TOMMEY and ATLANTA ROLLING MILLS COMPANY, Plaintiffs,
vs.
THE SPARTANBURG AND ASHEVILLE RAILROAD CO. & others, Defendants.

Mess. S. M. RICE & R. L. COLEMAN, partners under the name & style of Coleman & Rice.

SIRS: You are notified that on the first Tuesday after the second Monday in December, 1878, the plaintiffs in the above-entitled cause will apply to the judge of said court at Charlotte, N. C., being the term of said court then to be held, for an injunction and the appointment of a receiver of said defendant road, and other relief as is demanded in the bill of complaint filed in said court.

You are defendants, and can attend if you see proper.

Oct. 26th, 1878.

TOMMEY & ATLANTA ROLLING MILLS COMPANY,
Pr. BYNUM, *Atto. for Pl'ffs.*

84 And the said notices are returned into our said court with the following endorsements thereon, to wit: To D. R. Duncan, "service accepted October 26th, 1878;" to J. B. Cleveland and W. H. Inman, trustees, "service accepted November 2nd, 1878;" to E. Clayton, "executed November 6th, 1878;" to John Garrison, "executed November 9th, 1878;" to Fry and Deal and Rice and Coleman, "executed November 18th, 1878."

And on another day, to wit, October the 29th, A. D., 1878, D. R. Duncan, president of the Spartanburg and Asheville Railroad Company, files in our said court his answer, which said answer is in the words and figures as follows, to wit:

85 Circuit Court of the United States Western District of North Carolina. In Equity.

To the honorable the judges of the circuit court of the United States for the western district of North Carolina:

The answer of D. R. Duncan, president of the Spartanburg & Asheville Railway Company, to the bill of complaint herein answering, says:

Your respondent admits that the organization of the Spartanburg and Asheville Railway Company under the laws of the States of North & South Carolina was effected and consum-ated in manner and form substantially as recited in the bill of complainants. That the work of grading and constructing the said line of railway was begun in the State of South Carolina & county of Spartanburg on or about the ninth day of October, 1874, and a survey of the whole line made between the town of Spartanburg, South Carolina, and the town of Asheville, North Carolina, a distance of sixty-seven miles.

That the work of constructing said road continued without any suspension during the period from October, 1874, up to the middle of October, 1878. The line of said road is continuously graded from its junction with the Atlanta & Charlotte Air Line Railway in the vicinity of the town of Spartanburg, South Carolina, to the town of Hendersonville, North Carolina, a distance by rail of about
86 forty-nine miles, and also from the Swannanoa river, in the vicinity of the town of Asheville, south to the Henderson county line, a distance of about ten miles, making the whole of the graded line of said road to be a distance of fifty-nine miles, the line between the town of Hendersonville & the Buncombe county line, a distance of about nine miles remaining ungraded.

The object and purpose of the projectors & stockholders of said railroad company was, as stated, to make a continuous line of road between the town of Spartanburg, S. C., and the town of Asheville, N. C., and thence to reach the system of railways of East Tennessee and the west and northwest, thereby furnishing to the country the shortest and most important connection between those sections and the South Atlantic coast. From the sections of country west of the line which your respondent was constructing, the said corporation had much assurance of sympathy and co-operation, if not of material aid. To this end, the work of grading, as before stated, was carried on to the extent mentioned, which includes the crossing of the Blue Ridge Mountains, and the *and the* completion of all of the heavy work of the line. As stated by complainants, about forty-three miles of tract has been laid with the best & most approved iron rail, the *guage* of said tract being five feet.

Your respondents, having exhausted the private subscriptions to said road, so far as the same had been collected, and the county subscriptions of the counties of Spartanburg and Union, S. C.,
87 and of Henderson & Buncombe, N. C., resorted to the creation and execution of a first mortgage upon its line, the terms & purposes of which, respondent admits, are correctly set forth in the bill of complaint to secure the bonds of said Spartanburg & Asheville railroad issued in pursuance thereof. Your respondent fondly hoped that with these bonds a sufficient amount would be realized to complete the grading & ironing of said road to the Swannanoa river in the vicinity of the town of Asheville, and in pursuance of this end every effort at negotiation and of economy was used. But so it is, that every effort to sell bonds or to redeem those which had been hypothecated, whereby a sufficient amount could be realized to pay the interest and principal due to complainants, now past due, and other creditors, both secured and unsecured, whose claims are due & pressing upon your respondent for settlement, have utterly failed.

Your respondent admits that the complainants are the rightful holders of the said first mortgage bonds, as set forth by them, which were hypothecated for the purchase of railroad iron with the Atlanta Rolling Mill Company, of Atlanta, Ga. That your respondent has been compelled for the want of means to suspend the construction of said work. That there is about two miles of iron belonging

to respondents which is not laid down, & which, if put down, would enable those who at present operate the road to reach
88 a point where travel and freight could be more easily commanded, and the interest of the country through which said line runs be subserved and benefited.

Your respondent has not means to do this or to construct the necessary sidings, turn-table, & water-tank at the terminus.

The said railroad company does not possess any equipment of engines or rolling-stock. The operation of its line is leased to the Spartanburg, Union & Columbia R. R., who have notified your respondent that they cannot continue to operate the same unless the line is constructed two miles further to a point called McMinn's, where its business might be remunerative. The iron & fastenings now on hand would complete the road to that point. The condition of the road-bed, track, embankments, and cuts are such that much damage would result from non-use, and the great & vital interests of the country *those* which the road passes would greatly suffer should the work be suspended by long & expensive litigation.

Your respondent admits that, while a comparitively small sum is necessary to complete the work which is an essential link in a great through line, it is all important that it should be done immediately, no matter what may be the result of this proceeding. Your respondent verily believes that no good can come to any of the parties litigant in this cause from unnecessary delay. This respondent, while struggling to avoid this proceeding, which necessitates a sale of said railroad, sees no other method or practical way of
89 adjusting the rights of its creditors and of placing the enterprise in a condition to be completed at some early day.

Your respondent asks leave to attach herewith, when the same is prepared, an exhibit of liabilitiss & assets of said railroad company at the time of the filing of this answer.

Your respondent having answered, so far as he is advised, it is necessary or material for him to answer, prays to be hence dismissed, &c.

THE SPARTANBURG & ASHVILLE
RAILROAD COMPANY,
By D. R. DUNCAN,
President.

EVINS & BOMAR & BOBO,
Respondent's Sol'rs.

And on another day, to wit, October 30th, 1878, an order granting an injunction and appointing James Anderson receiver, is filed in our said court; which said order is in the words and figures as follows, to wit:

90 Circuit Court of the United States, Western District of North Carolina. At Chambers in Greensboro', Oct. 30th, 1878.

VINCENT R. TOMMY and ATLANTA ROLLING MILL COMPANY
vs.
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY.

It appearing to my satisfaction from the bill of complaint filed in this cause and used as an affidavit, and from the answer thereto, filed by the defendant the Spartenburg and Asheville Railroad Company, that the defendants, S. M. Rice and R. L. Coleman, partners under the name and style of Rice & Coleman, J. E. Fry and J. A. Deal, partners under the name and style of Fry & Deal, E. Clayton & Sons, and John Garrison, have instituted, or are threatening to institute, legal proceedings to set up and enforce alleged liens upon and obtain possession of portions of the Spartanburg and
91 Asheville railroad, in the counties of Polk, Henderson, and Buncomb, in said district and State of North Carolina, and otherwise to interfere with, obstruct, and hinder the running of the trains and regular operation of said road, under and by virtue of said alleged liens and claims, whereby irreparable mischief and damage will be sustained by these plaintiffs and the rights of property acquired by them, as set forth in said bill of complaint, be greatly impaired; and it also appearing that notices have been issued and served upon said defendant road and others of the filing of said bill, and that the plaintiffs would apply for an injunction against the defendants and the appointment of a receiver for said railroad during the pendency of the suit, at the ensuing term
92 of said court, to be held in the city Charlotte, on the second Monday of December, 1878; and it further appearing that the urgency of the case is such that the application for relief cannot be made in time to the circuit judge of the district. It is, therefore, considered by me, and it is ordered, that a temporary injunction issue to the said Spartanburg and Asheville Railroad Company and its trustees under the mortgage, its officers, agents, and attorneys, and to said Fry and Deal, Rice and Coleman, E. Clayton & Sons, and John Garrison, their respective agents and attorneys, injoining and restraining them and each of them from taking any steps or doing any acts for the enforcement of any alleged lien or liens or claim which the latter parties, the said contractors, have upon said Spartanburg and Asheville rail-
93 road, or any part of it, and from taking or interfering with the possession of the same, either by reason of the purchase or pretended purchase of any portion of the right of way of said road, or as contractors for building any portion of said road or other work done upon it or material furnished, and further enjoining and restraining the said Spartanburg and Asheville Railroad Company, its officers, agents, and attorneys from delivering possession of said railroad or its appurtenances, or any part thereof, or any of the other property of the said railroad company, either that to which said company has a full and complete right and title, or to that to which it has only an inchoate right and title, or an equitable interest

therein, to any person except a receiver appointed by this
94 court, or to the trustees under the mortgage upon the order of this court; and from doing or suffering to be done any act or thing whatsoever which shall promote delivery, or in anywise affect the present status of the plaintiffs and impair their security.

It is further ordered that John B. Cleveland and W. H. Inman, trustees of the said road under the mortgage, be in like manner restrained from selling, hypothecating, or in any manner disposing of any of the bonds or other property whatsoever in their possession or under their control, or the control of their agents or attorneys, belonging in whole or part to said Spartanburg and Asheville Railroad Company, until the said next term of this court and the further order of the court.

And it further appearing from the complaint and answer
95 of the defendant road hereto that irreparable mischief and damage will accrue to the plaintiffs and the said road in default of the appointment of a receiver of said road and its property and appurtenances pending this suit in equity for the foreclosure of the mortgage, it is, therefore, ordered that James Anderson, the present superintendant of the Spartanburg, Union and Columbia railroad be, and he is hereby, appointed the receiver of said Spartanburg and Asheville railroad until the term of this court, to be held in Charlotte on the second Monday in December, 1878, and the further order of the said court, and the said receiver is authorized and empowered to complete said road to the extent of the iron on hand, and to make all necessary contracts for that purpose, to take
96 full possession of said road and all the property and appurtenances belonging or in anywise appertaining thereto, and to operate and manage said road without let or hindrance of the said Spartanburg and Asheville Railroad Company, or any of its officers or agents, subject to the direction of this court.

It is further ordered that the said James Anderson, receiver, as aforesaid, before entering upon his duties as such, shall execute to the defendant company a bond in the sum of ten thousand dollars, with sureties to be approved by the clerk of the court at Charlotte, conditioned for the faithful performance of his duty as receiver, and to indemify and save harmless the said defendant from his wrongful acts as receiver.

The clerk will issue to the defendants certified copies
97 of these orders, and all other necessary process, according to the exigency of the case and the rules of court.

ROBERT P. DICK,
U. S. Dist. Judge.

And at another day, to wit, November 28th, 1878, the said order was returned to our said court, endorsed as follows, to wit: "Executed by delivering a true copy to John Garrison, Nov. 6th, 1878, and to E. Clayton, Nov. 9th, 1878, and to —— Deal, of the firm of Fry & Deal, Nov. 18th, 1878, and by leaving a copy at the place of business of Rice & Coleman, Nov. 18th, 1878."

And afterwards, to wit, on the 31st day of October, 1878, James Anderson, receiver, files in our said court a bond in the sum of ten thousand dollars, with R. Y. McAden; as security, which said bond is in the words and figures as follows, to wit:

98 Circuit Court of the United States, Western District of North Carolina. In Equity.

VINCENT R. TOMMY AND ATLANTA ROLLING MILLS CO., Plaintiffs,

vs.

THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY and others, Defendants.

Know all men that we, James Anderson, principal, and R. Y. McAden, surity, are held and bound unto the Spartanburg and Asheville Railroad Company in the sum of ten thousand dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs and assigns, firmly by these presents.

The condition of this obligation is such, that whereas the above-bounden James Anderson has, by an order of this court made in the above cause, on the 30th October, 1878, by Hon. R. P. Dick, judge
99 of said court, been appointed receiver of said def't road, as will appear by the decree filed: Now, the conditions of this bond is such that if the above bounden James Anderson shall well and truly and faithfully perform the duties of receiver of said road, and shall well and truly account for all moneys, property, and effects of said def't company which shall come into his hands according to the true intent and meaning hereof, and in all other respects well and truly demean himself in said office, under the orders and directions of this court, until the next term of this court, or its further order, then this obligation to be void; otherwise this obligation to be and remain in full force and effect.

Oct. 31st, 1878. JAMES ANDERSON. [SEAL.]
R. Y. McADEN. [SEAL.]

Attest: JOSIAH D. COWLES,
Deputy Clerk.

100 I adjudge that said bond is good and sufficient.
H. C. COWLES, *Clerk,*
By JOSIAH D. COWLES,
Deputy Clerk, at Charlotte.

101 And on said 31st day of October, 1878, a subpœna, with six (6) copies for the defendants, is issued; which said subpœna is in words and figures as follows, to wit:

UNITED STATES OF AMERICA:

Western District of North Carolina. In Equity.

The United States of America to E. Clayton, W. H. Inman, John B. Cleveland, John Garrison, S. M. Rice, & R. L. Coleman, partners under the name & style of Rice and Coleman, and J. E. Fry & J. A. Deal, partners under the name & style of Fry & Deal:

We command you, and every one of you, that you appear before the judges of our circuit court of the United States of America for the western district of North Carolina, at the office of the clerk of the said court, in the city of Charlotte, in said district, on the first Monday in the month of December next, to answer the bill of
102 complaint of Vincent R. Tommey and Atlanta Rolling-Mill Company against The Spartanburg and Asheville Railroad Company and others filed in the clerk's office of said court, in said city of Charlotte, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the western district of North Carolina to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Charlotte, in said district, the 31st day of October, 1878, and in the 103d year of the Independence of the United States.

Issued the 31st day of October, 1878.

[SEAL.] H. C. COWLES, *Clerk.*
By JOSIAH D. COWLES,
Deputy Clerk, at Charlotte.

103 Which said subpœna is returned into our said court on November 28th, A. D. 1878, endorsed in the words and figures as follows, to wit: "Executed by delivering a copy to John Garrison, November 9th, 1878, and to Ephraim Clayton, November 6th, 1878, and to Fry and Deal, November 18th, 1878, and to Rice and Coleman November 18th, 1878," and "service acknowledged by W. H. Inman, November 2d, 1878."

And on another day, to wit, November 6th, 1878, the joint answer of W. H. Inman and John B. Cleveland is filed in our said court; which said answer is [in] the words and figures as follows, to wit:

104 Circuit Court of the United States, Western District of North Carolina.

VINCENT R. TOMMY & ATLANTA ROLLING MILL COMPANY, Plaintiffs,
vs.
SPARTANBURG AND ASHEVILLE RAILROAD COMPANY *et al.*, Defendants.

The joint answer of William H. Inman and John B. Cleveland: These defendants reserving to themselves all right of exceptions

to the said bill of complaint, for answer thereto, admit that such indenture or mortgage as in the said bill is set forth, was duly made and executed by and between these defendants on the one part, and the Spartanburg and Asheville Railroad Company on the second part, and was of such date and such purport and effect as in
105 the said bill of complaint in that behalf stated, but for greater certainty nevertheless as to said indenture or mortgage, and the respective dates, purport, and effect thereof, these defendants crave leave to refer thereto when produced. And these defendants further answering, say:

They admit that, in pursuance of the terms and conditions of said mortgage, the said company issued and negoated the first mortgage seven per cent. gold bonds of the denomination, tenor, & effect as alleged in the bill, and that the said bonds were issued for the purposes alleged.

In answer to the remaining allegations of the bill, these defendants say:

They admit all the allegations thereof, so far as they come within their information or belief.

106 These defendants would further answer that, from the nature & condition of the property as described in the bill, & from their personal knowledge of the affairs of the said railroad, it is absolutely necessary that some provision should be made for preserving the roadway, laying the iron now on hand, constructing such side tracks, turn-table, station-houses, and such other improvements work as may be necessary to the full use, benefit, and enjoyment of the road now constructed; and, furthermore, it would but subserve the interest of all parties that the sale be ordered at as early a day as practicable.

These defendants would further say that the said first mortgage provides as follows:

"That if default shall be made in the payment of any of the semi-annual interest due upon said bonds, or upon either or
107 any of them, and said default shall continue for six months thereafter, then, & after the lapse of said six months, the whole principal sum mentioned in each and all of the said eleven hundred bonds shall forthwith be & become due and payable; or if default be made in the principal of said bonds, or either of them, & in either of said cases, the lien & incumbrance created hereby may be immediately enforced, & that it shall & may be lawful for said party of the second part, and they are hereby expressly authorized and empowered, upon the request of, in writing, of the holders of a majority in amount of the said bonds, to enter upon and take possession of said railroad & premises, real & personal, hereby conveyed or intended so to be, & make sale of said railroad, premises, & appurtenances, & of all benefit & equity of redemption & legal
108 & equitable right of the said party of the first part hereto, at public auction, giving reasonable and public notice of the time and place of such sale by advertisement in the public newspapers; and the said party of the second part, as the attorney-in-fact hereto of the first party, duly authorized, constituted, & ap-

pointed for that purpose by these presents, may make & deliver to the purchaser or purchasers thereof a good & sufficient deed or deeds of conveyance for the same, &c."

That no request in writing has been made as is provided in the foregoing provisions of said mortgage, and without specifying or alleging any of the terms of said mortgage as a matter of defence to the bill herein recognizing their position & the relation they bear to the holders & owners of all of said first morgage seven per
109 cent. gold bonds, & with the desire to execute faithfully their duty in the premises, the defendants crave the construction and advise of the court on all of said matters.

These defendants further sayeth, that they are ready and willing to carry out all the provisions of said mortgage, and to do & perform what may be necessary for them to do in order to discharge the duties of their trust, and for that purpose they join in the prayer for the relief demanded in the bill, so far as it may be fit and proper for them so to do.

Wherefore defendants pray that they may be discharged from any further answer herein, and that they may be allowed their reasonable costs and expenses.

EVINS & BONER &
April 2nd, 1878. BOBO & CARLISLE, *D'f'ts' Att'ys.*

110 And at a term of our said court, begun, opened, and held in the city of Charlotte, in and for the western district of North Carolina, on the second Monday in December, A. D. 1878, it being the 9th day of said month, the Hon. Robert P. Dick, judge of the United States district court for said district, being present, presiding, and holding said court, when on the 13th day of said month of December D. R. Duncan, president of the Spartanburg and Asheville Railroad Company, filed an amended answer in said court, which said amended answer is in words and figures as follows, to wit:

CIRCUIT COURT OF THE UNITED STAES, } In Equity.
Western District of North Carolina, }

To the honorable the judges of the circuit court of the United States for the western district of North Carolina:

111 The respondent, D. R. Duncan, as president of the Spartanburg and Asheville Railroad Company, by leave of the court first had and obtained, by this his amended answer, says:

That when the receiver appointed for the company respondent in this cause by an order of this honorable court shall have completed the laying of the iron on hand to the point known as McMinus, in obedience to said order, the road will be completed to within six miles of the town of Hendersonville, N. C. That the entire grading of said six miles has been finished, and the trestle timbers prepared for raising, all of which trestle timbers had been paid for.

That said grading and timbers will be greatly damaged unless

the same are preserved by laying a superstructure of cross-ties and iron, and keeping them in a proper state of repair.

112 That the said road has, thus far, failed to pay the expences of its operation, and is not likely to be self-sustaining until it shall be exteuded to the said town of Hendersonville, N. C., which is the most important point between the termini of said road.

That your respondent believes that the interest of all parties to this cause would be greatly promoted if your honors should direct the receiver, under proper instructions, to proceed at once, pending these proceedings, to lay the superstructure upon said six miles of road to the said town of Hendersonville.

That the comparatively small sum which would be required to accomplish this work, would be more than compensated by the enhanced value of the whole line of road and the largely in-

113 creased amount of its patronage and earnings, wherefore your respondent prays that your honors will order the receiver aforesaid to complete the said line of road to the said town of Hendersonville, N. C.; and to that end, that he be authorized to issue certificates of indebtedness, not to exceed the sum of —— dollars, which said certificates of indebtedness shall have a prior lien upon the property of said Spartanburg and Asheville railroad, to all other incumbrances hertofore created and now existing, and to be payable first out of any net earnings of said road, and out of the proceeds of the sale of said road before said proceeds are applied to any other lien or claim then existing.

THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY,
By D. R. DUNCAN, *President.*

EVINS & BOMAN,
BOBO ——,
Sol's for Respondent.

114 And at said term of said court, on the 13th day of December, 1878, James Anderson, receiver, presented and filed in said court his report, which said report is in words and figures as follows, to wit:

115 OFFICE S. & A. R. ROAD COMPANY,
SPARTANBURG, *Dec'r 10th*, 1878.

Hon'l R. P. DICK,
Judge of the Western Dist. N. C. U. S. Court:

SIR: In obedience to the order of your court, I took possession of the Spartanburg and Asheville, as receiver, on the first day of November last, and operated the same with the following results:

Received from transportation on freights from 1st November to the 30th, inclusive	$721 69	
From passengers	337 95	
		$1,059 64

Total receipts for month	$1,059 64
The operating expenses for the same time are as follows	$978 14
Leaving a balance of	$81 50

A detailed statement of expenditure is herewith submitted.

The road having no rolling-stock of its own, I was compelled to lease from the Spartanburg, Union and Columbia R. Road Company, engines & cars to operate with.

The rent agreed to be paid for the same is, as follows:

Two locomotive engines, 26 days, @ 7.00 each p'r day	$364 00
One passenger coach, 26 days, @ 4.00 p'r day	106 60
One do. 8	32 80
Two flat cars for road service, 26 days—52 days, at 2.00	104 00
116 For use of freight cars 2,794 miles, @ 1½ cts. per mile	41 90
	649 31
Deduct the above balance	81 50
Amount due the S. & U. R. R. Company	$567 81

I find the road bed graded ready for the iron to Hendersonville, a distance of 7¾ miles from the present terminus of the line.

If the iron was laid and the line completed to Hendersonville, I am of opinion the business from a large territory would be opened to the road, sufficient to make the road self-sustaining. If this part of the line is not completed at once, the earth-work will be damaged by washing and the value of the property impaired.

I would therefore recommend the completion of the line to Hendersonville as soon as practicable.

Respectfully submitted,

JAS. ANDERSON, *Receiver.*

Said report was read in open court, and referred to the clerk of this court to be audited, approved, and filed, which is done accordingly.

117 And at said stated term of our said court, on said 13th day of December, 1878, the defendants' attorneys enter their appearance, as of rule day in December, and have leave till rule day in January, 1879, to file answers.

And on said day and term of said court, an agreement of counsel allowing defendants 'til rule day in February, 1879, to file answers is filed, which said agreement is in the words and figures, to wit:

118 Circuit Court of the United States, Western District of North Carolina.

VINCENT R. TOMMY and ATLANTA ROLLING-MILL COMPANY
vs.
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY and others.

It is agreed by the undersigned, counsel for the plaintiffs in the above-entitled cause, that the defendants in said cause shall have leave to file their answers on the first (1st) Monday in February, 1879.

THOMPSON & BYNUM,
Attorneys for Plaintiffs.

And at said December term, 1878, of our said court, on the 13th day of said month, James H. Merriman, Esqr., attorney for Buncombe county, moves the court to allow said county to become a party defendant, which said motion is in the words and figures as follows, to wit:

119 Circuit Court of U. S., West. Dist. of N. C.

V. R. TOMMEY & ATLANTA ROLLING MILLS COMPANY
vs.
THE SPARTANBURG & ASHEVILLE RAILROAD COMPANY and others.

The county of Buncombe, by counsel, moves the court here to be permitted to become a party defendant in this suit, & for leave to answer the bill of complaint herein, as the county is advised that the interest of said county as a stockholder in said Spartanburg & Asheville Railroad Company can be better represented in this way.

J. H. MERRIMON,
Atto. for Buncombe County.

And at said December term, 1878, of our said court, and on the 13th day of said month, a decree is made granting an injunction and appointing James Anderson receiver, which said decree is in words and figures as follows, to wit:

120 *Bill for Injunction.*

Circuit Court of the United States, Western District of North Carolina.

VINCENT R. TOMMEY AND ATLANTA ROLLING MILL CO.
vs.
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY *et al.*

In open court December Term, 1878.

No cause having been shown why the injunction applied for in above stated case should not be granted, and a receiver appointed with the rights, privileges, and powers set forth in the amended answer of the Spartanburg and Asheville R. R. Co.:

It is considered and ordered that an injunction issue as applied

for to the said Spartanburg and Asheville Railroad Company, and the trustees under the mortgage, its officers, agents, and attorneys, and to said J. E. Fry & J. A. Deal, partners under the name & style of Fry and Deal, S. M. Rice & R. L. Coleman, partners under the
121 name & style of Rice and Coleman, E. Clayton & Son, and John Garrison, their respective agents and attorneys, enjoining and restraining them, and each of them, from taking any steps or doing any acts for the enforcement of any alleged lien or liens, or claim, which the latter parties, the said contractors, have upon said Spartanburg and Asheville Railroad, or any part of it, beyond judgment, ascertaining the amount of the debt only, this court having and reserving the right to ascertain and declare what are the liens and priorities of liens upon the property, and from taking or interfering with the possession of the same, either by reason of the purchase or pretended purchase of any portion of the right of way of said road, or as contractors for building any portion of said road, or other work done upon it or material furnished, and further enjoining and
122 restraining the said Spartanburg and Asheville Railroad Company, its officers, agents, and attorneys from delivering possession of said railroad or its appurtenances, or any part thereof, or any of the other property of said railroad company, either that to which said company has full and complete right and title, or to that to which it has only an inchoate right and title, or an equitable interest therein, to any person except a receiver appointed by this court, or to the trustees under the mortgage upon the order of this court, and from doing, or suffering to be done, any act or thing whatsoever which shall promote such delivery, or in any wise affect the present *status* of the plaintiffs and impair their security.

It is further ordered, That John B. Cleveland and W. H.
123 Inman, trustees of the said road under the mortgage, be in like manner restrained from selling, hypothicating, or in any manner disposing of any of the bonds or other property whatsoever in their possession or under their control, or the control of their agents or attorneys, belonging to said Spartanburg and Asheville Railroad Company in whole or in part, legally or equitably, until the further order of this court.

And it further appearing from the complain[ant] and the answer and amended answer of the defendant road thereto, that irreparable mischief and damage will accrue to the plaintiffs and the said road and other parties interested in default of the appointment of a receiver of said road, its property and appurtenances pending this suit in equity for the foreclosure of the mortgage, with power
124 to complete said road to Hendersonville.

It is therefore ordered that James Anderson, the present superintendent of the Spartanburg, Union, and Columbia railroad be, and he is hereby, appointed the receiver of said Spartanburg and Asheville railroad until the further order of this court; and the said receiver is authorized and empowered to complete said road to the town of Hendersonville, and to make all necessary contracts for that purpose, provided that in no event shall such work of extension be undertaken unless it can be completed for the sum of thirty-five

thousand dollars or less; and provided further, that any evidence of indebtedness incurred by said receiver in said work of completion shall not exceed said sum of thirty-five thousand dollars,
125 shall not bear a greater rate of interest than seven per cent. per annum, and shall, in their payment, have priority over any existing lien upon the property of said Spartanburg and Asheville R. R. Co., said receiver is authorized and directed to take full possession of said road and all the property and appurtenances belonging, or in anywise appertaining thereto, and to operate and manage said road without let or hindrance of the said Spartanburg and Asheville Railroad Company, or any of its officers or agents, subject to the direction of this court.

It is further ordered that said James Anderson, receiver as aforesaid, before entering upon his duties as such, shall execute to the defendant company a bond in the sum of fifty thousand dol-
126 lars, with sureties to be approved by the clerk of this court, conditioned for the faithful performance of his duty as receiver, and to indemnify and save harmless the said defendants from the wrongful acts.

It is further ordered that said receiver be authorized to employ counsel and defend the suits of said contractors, or other suit that may be instituted in the State courts for the purpose of enforcing liens or claims against the property of said Spartanburg and Asheville Railroad Company.

It is further ordered that the clerk of this court issue to the defendant writs of injunction, as provided in this court, and all other necessary process according to the exigency of the case and the rules of this court.

This December 13, 1878.

ROB'T P. DICK, *Judge.*

127 And at said December term, 1878, and on said 13th day of December, 1878, the said James Anderson, receiver, filed in said court his bond, in the sum of fifty thousand dollars, with R.. Y. McAden, as surity thereto. Said bond is in words and figures following, to wit:

128 Circuit Court of the U. S., Western Dist. of N. C. In Equity.

VINCENT R. TOMMEY and ATLANTA ROLLING MILL CO., Pl'ffs.

vs.

THE SPARTANBURG and ASHEVILLE R. R. Co. and others, Def'ts.

Know all men, that we, James Anderson, principal, and R. Y. McAden, surity, are held and bound unto the Spartanburg and Asheville Railroad Company, in the sum of fifty thousand dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs and assigns, firmly by these presents.

The condition of this obligation is such that, whereas the above bounden James Anderson has, by an order of this court, made in the above cause, on the 13th day of Dec., 1878, by Hon. R. P.

129 Dick, judge of said court, been appointed receiver of said road, def't, as will appear by the decree filed.

Now, the condition of this bond is such, that if the above bounden James Anderson shall well and truly and faithfully perform the duties of receiver of said road, and shall well and truly account for all money, property, and effects of said def't company, which shall come into his hands, according to the true intent and meaning hereof, and in all other respects shall well and truly demean himself in said office under the orders and directions of this court until the next term of this court, or its further order, then this obligation to be void; otherwise this obligation to remain in full force and effect.

130 JAMES ANDERSON. [SEAL.]
R. Y. McADEN. [SEAL.]

I adjudge that said bond is good and sufficient.

H. C. COWLES, *Clerk.*

UNITED STATES OF AMERICA, }
Western District of North Carolina, } *ss:*

R. Y. McAden, being by me duly sworn, says that he is worth the sum of fifty thousand dollars, over and above all his debts and liabilities, and property exempt from execution.

R. Y. McADEN.

Subscribed and sworn to before me, this 13 day of December, A. D. 1878.

H. C. COWLES,
Clerk U. S. Courts for said District.

And afterwards, to wit, January 6th, 1879, John Garrison files in our said court his answer, and exhibit thereto attached, marked Exhibit "A," which said answer and exhibit are in the words and figures as follows, to wit:

131 Circuit Court of the United States, Western District of North Carolina. In Equity.

V. R. TOMMY & ATLANTA ROLLING MILL CO., Pl'ffs.
vs.
SPARTANBURG & ASHEVILLE RAILROAD CO. & others, Defendants.

To the honorable the judges of said court:

Answer of John Garrison, one of the defendants, who, reserving all right of exception to the many imperfections, and irregularties in plaintiffs' bill of complaint for answer to so much of said bill as he is advised is material for him to answer, says: That on the 1st day of December, 1876, he contracted with the Spartanburg and Asheville Railroad Company, through its duly and legally authorized agent, to furnish the material and build a trestle for said company over Vaughn's creek, at the price of twenty-five dollars per

thousand, board measure, for the lumber to be used in said trestle; said trestle was to be completed on or before the day it might be reached by the track of said company; that in pursuance of said contract, this defendant did erect, or cause to be erected, said trestle within the time prescribed by said contract, and furnished for said trestle 228,266 feet of lumber, board measure, amounting to
132 five thousand seven hundred and six $\frac{65}{100}$ dollars, which amount of lumber was used in the construction of said trestle, which said trestle was accepted by said company, and said company promised to pay this defendant the sum of $5,706.65 for said lumber and for erecting the same into said trestle; and the said company in part performance of their agreement, have paid the sum of five thousand three hundred and forty-nine $\frac{14}{100}$ dollars, and the remainder, to wit, the sum of three hundred and fifty-seven $\frac{51}{100}$ dollars is due this defendant, with interest from the completion of the contract. This defendant, further answering, says that on the 2nd day of June, 1877, he further contracted with the said railroad company to furnish the material and erect a trestle for said company (to be used as a part of the track of said company) over Mills creek, at the price of fifteen dollars per thousand feet for square lumber, board measure; said trestle to be completed in a reasonable time, and in pursuance of said contract this defendantd did furnish 52,554 feet of round lumber and 97,656 feet of square lumber, and 1,487 feet of gangway-plank at $10 per thousand, and also built a foundation of rock for said *said* trestle, for which the company agreed to pay $150; and this defendant did erect said trestle of said
133 material so furnished by him; that the value of the material so furnished and erected into the said trestle was round lumber, $788.31; square lumber, $1,953.12; gangway plank, $14.87; foundation work, $150; aggregating $2,906.30; that said trestle was erected out of said materials within the time prescribed by the contract and the said company accepted the same and promised to pay this defendant the sum of twenty-nine hundred and six $\frac{30}{100}$ dollars for the same.

That this defendant is a mechanic, and not only furnished the said material, but devoted his personal labor and skill to the erection of said trestle; that no part of said sum has been paid this defendant and the same is still due, with interest from 18th February, 1878, the time of the completion of the contract. This defendant, further answering, says that on the 2nd day of April, 1878, he filed in the superior court, clerk's office of Polk county, North-Carolina, a mechanic's lien, for said material, &c., a copy of which is hereto annexed, and marked "A," which he asks to be taken as a part of this answer; which said lien was duly docketed, as the law requires, by the said clerk on said 2nd day of April, 1878, as this defendant is informed and believes.

This defendant, further answering, says that the said railroad company failed to pay said sums due him, after demand made for the same, and this defendant, on the 10th day of August, 1878, commenced proceedings in the State court of North Carolina, to
134 wit, in the superior court of Polk county, to enforce his said

liens; that he commenced said proceedings before the institution of this action by the present plaintiffs; that this defendant resides in said Polk county, and the said trestles are located in Polk county, and the said railroad company has been incorporated by the Legislature of North Carolina.

This defendant, further answering, says it is not true, as alleged in complainants' bill, that he desires or threatens any irreparable mischief to said railroad company, and he has no desire to hinder, obstruct, or interfere with said railroad in any way whatsoever, but, as he thought he had a right to do, he is endeavoring to enforce his liens in the State court, the only court to which he could apply for relief in the premises; that it is not true, as charged in complainants' bill, that this defendant contracted with the said railroad company and erected said trestles with a knowledge that the mortgage set forth in complainants' bill had been executed, and this defendant avers the truth to be that he had no knowledge that the said mortgage had been executed, or that any bonds whatsoever had been issued, till the said trestles were nearly completed, and that the work on the same had been completed, and his lien filed in the superior court clerk's office before the said mortgage was registered in Polk county.

135 That, as this defendant is informed and believes, the State of North Carolina has no interest in said railroad, and has contributed nothing to build and construct the same; that he is informed and believes that his said contract with said company, and work done & materials furnished under the same, was with the full knowledge and consent of the holders of the alleged 1st mortgage bonds of the company.

And this defendant submits to this honorable court that the plaintiffs have not, in their bill, shown any case in equity, or case entitling them to proceed against him in this honorable court to enjoin him from proceeding with his proceedings to enforce his said lien in the court of the State, and he prays all such benefit as if he had demurred to said bill, or had pleaded the said matter; but this defendant says that the sums above alleged in this answer to be due him from the said Spartanburg and Asheville Railroad Company are justly due and owing to him; that the said company have acknowledged the same, and promised to pay the same, and defendant insists that his lien, set forth in this answer, is valid, and entitled him to be preferred in payment to the plaintiffs or any other creditors of the said Spartanburg & Asheville Railroad Company, and he insists that he be examined *pro inteneo suo.*

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is charged; and, having answered all that he is advised is material for him to answer,

136 prays this honorable court to be hence dismissed, with his reasonable costs, &c.

W. J. MONTGOMERY,
Atto'y for Def't.

On this, the 25th day of December, 1878, personally appeared

before me, James A. Thorn, United States commissioner, John Garrison, and made oath that the facts stated in the foregoing answer, as of his own knowledge, are true, and those stated on information and belief he believes to be true.

JOHN GARRISON.

Subscribed & sworn to before me, this 25 day of December, 1878.

J. A. THORN,
U. S. Commissioner.

137 "A."

Polk County Superior Court.

JOHN GARRISON
vs.
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY. } Mechanics' lien.

The above named John Garrison files his notice and claim of lien in the office of the superior court clerk for Polk county, said claim is for work and labor done and materials furnished for the said Spartanburg and Asheville Railroad Company, upon the Spartanburg and Asheville railroad to the amount of $8,612.95. Said work and labor and materials were performed and furnished in the erection and construction of two railroad trestles, on the aforesaid railroad, in Polk county, known as the Vaughn creek trestle and Mill creek trestle. The claim for work and labor and materials performed and furnished on the former, namely, Vaughn creek trestle, amounts to $5,706.65, of which there is $1,200 still due.

The claim for work and labor and materials performed and furnished in the latter, namely, Mill creek trestle, amounts to $2,906.30.

The following is a bill or statement of the materials furnished in the erection and construction of the Vaughn creek trestle, to wit:

228,266 ft. b. m. lumber, @ $25	$5,706 65

138 The following is a bill or statement of the materials furnished in the erection and construction of the Mill creek trestle, to wit:

52,554 b. m. ft. round lumber, @ $15	$788 31
97,656 " " square " " $20	1,953 12
1,487 gang way plank, $10	14 87
Making foundation, including masonary, &c., at Mill creek	150 00
	2,906 30

February 18, 1878.

The said John Garrison claims his lien on the aforesaid Spartanburg and Asheville railroad, and therefore requires the superior court clerk for Polk county to enter and record the above as a lien

on the aforesaid trestles, road, its track, road-bed, & depot lands, its tenements, hereditaments, rights of way, and easements.

April 2, 1878.

(Signed) JOHN GARRISON.

Sworn and subscribed before me, this 2nd day of April, 1878.

R. S. ABRAMS,
Clerk Superior Court for Polk County.

Recorded in Lien Book on the 2nd day of April, 1878, 156–7.

R. S. ABRAMS, *Clk.*

139 And on another day, to wit, the 31st day of January, 1879, the defendants, J. E. Fry & J. A. Deal, partners under the name & style of Fry & Deal, file in said court their answer and exhibit thereto appended, which said answer and exhibit is in words and figures as follows, to wit:

140 Circuit Court of the United States, West. Dist. of North Carolina. In Equity.

The answer of J. E. Fry and J. A. Deal, partners under the name and style of Fry & Deal, two of the defendants, to the bill of complaint of Vincent R. Tommy and the Atlanta Rolling Mills Company, complainants.

These defendants, reserving to themselves all right of exception to the said bill of complaint, for answer thereto, say:

That they admit that the Spartanburg and Asheville Railroad Company was a corporation created by an act of the Legislature of South Carolina, as alleged in said bill of complaint, and that the Greenville and French Broad Railroad Company was a corporation created by an act of the Legislature of North Carolina; and these defendants further admit that until after this suit was begun they had been under the impression that the said two railroad companies had consolidated and created a new corporation, or that the existence of the said The Greenville and French Broad Railroad Company had been merged into the said The Spartanburg and Asheville Railroad Company, and that the said last-named company had been by such consolidation made a new corporation, bearing its original name, or had been clothed with the franchises, powers, rights, privileges, and immunities of the said The Greenville and French

141 Broad Railroad Company; but these defendants say that since this suit was begun they have been informed, and believe it to be true, that no authority was conferred upon the said The Greenville and French Broad Railroad Company by its charter, or any amendment thereto, to consolidate with the said The Spartanburg and Asheville Railroad Company, or any other railroad corporation, so as to create any new corporation by such consolidation, or to transfer or to clothe any other railroad corporation with its powers, rights, franchises, privileges, or immunities; and these defendants further say that the only authority under which the said The Green-

ville and French Broad Railroad Company could consolidate with the said Spartanburg and Asheville Railroad Company, or any other company, is to be found in sections fifty-eight, fifty-nine, sixty, sixty-one, and sixty-two of chapter ninety-nine of Battle's Revisal of the Public Statutes of North Carolina; that said companies have never been consolidated, according to the laws of North Carolina, and that said The Spartanburg and Asheville Railroad Company is not a new corporation created by the consolidation of the original The Spartanburg and Asheville and the Greenville and French Broad Railroad Companies, but is a corporation created by and under the charter granted to it by the State of South Carolina, and its corporate existence, franchises, powers, rights, privileges, and immunities were and are derived only from the said charter and the amendments thereto and the laws of the State of South Carolina.

142 And these defendants, further answering, say that they admit that the boards of directors of the said railroad companies made an agreement to consolidate the said companies on or about the 31st day of July, 1874, and that such agreement was of the nature of the one set forth in the bill of complaint; but they deny that said agreement was ever submitted to, or ratified by the stockholders of the said the Greenville and French Broad Railroad Company, as required by the laws of North Carolina, hereinbefore referred to. These defendants, further answering, say they admit that the Spartanburg and Asheville Railroad Company determined to mortgage its road; but they deny that said company had any power or authority to mortgage any of the property, right, or franchise of the Greenville and French Broad Railroad Company, or to mortgage any property claimed by the said the Spartanburg and Asheville Railroad Company as right of way situate in North Carolina.

These defendants, further answering, say that they are informed, and believe it to be true, that the mortgage which it is alleged in the said bill of complaint was made by the said the Spartanburg and Asheville Railroad Company was not executed according to the laws of North Carolina, and was and is therefore void.

And these defendants, further answering, say they are informed, and believe it to be true, that neither the stockholders nor the board of directors of the said the Spartanburg and Asheville Rail-

143 road Company ever made or authorized any person or persons to make, on behalf of said company, such mortgage as it is alleged in the bill of complaint was made; that there was never any authority given by said stockholders or said board of directors to provide in said mortgage that if default should be made in the payment of any of the semi-annual interest due upon said bonds, or upon either or any of them, and said default should continue for six months thereafter, then, after the lapse of said six months, the whole principal sum mentioned in each and all of the said eleven hundred bonds should forthwith be and become due and payable; but these defendants say that the bonds authorized by said stockholders and board of directors were not to mature and become due and payable until twenty years after their date; and

they further say that the provision in said alleged mortgage by which it was attempted to make said bonds become due and payable for default in the payment of interest, if of any validity at all, could only be taken advantage of by the trustees named in said mortgage for the foreclosure of said mortgage, as these defendants are advised and believe; and they say that said trustees have not begun a suit to foreclose said mortgage, or otherwise indicated a purpose on their part to take advantage of said default, as far as these defendants know; and they further say that the said provision in said alleged mortgage above referred to is not mentioned or referred to in the said bonds, as they are informed and believe to be
144 true, but that said bonds upon their face purport to run for twenty years from their date; and these defendants further say that they are informed, and believe it to be true, that the said alleged mortgage was never submitted to the board of directors of said company after it was prepared, and was not registered until after the greater part of said bonds had been disposed of.

These defendants, further answering, say that they are informed, and believe it to be true, that prior to the date of said alleged mortgage the county of Union, in the State of South Carolina, subscribed to the capital stock of the said The Spartanburg and Asheville Railroad Company the sum of one hundred and fifty thousand dollars, and delivered to said company in payment of said subscription bonds of the county for said amount; that the county of Spartanburg, in said State of South Carolina, subscribed to the capital stock of said company the sum of one hundred thousand dollars, and delivered to said company in payment of said stock bonds of the said county for said amount; that the county of Henderson, in the State of North Carolina, subscribed to the capital stock of said company the sum of one hundred thousand dollars, and delivered to said company in payment of said subscription the bonds of the county for said amount; that the county of Buncombe, in said State of North Carolina, subscribed to the capital stock of said company the sum of one hundred thousand dollars, and delivered to said company in payment of said stock the bonds of the county
145 for said amount; and private individuals subscribed largely to the capital stock of said company, and paid to said company a large sum of money, to wit, fifty thousand dollars and more, and much of the capital stock of said company was subscribed for by contractors of said company, and paid for by said contractors in work upon said company's road. These defendants further show that the defendant, W. H. Inman, is, and was at the times hereinafter mentioned, a stockholder and director in the said The Spartanburg and Asheville Railroad Company, and while acting as said director he purchased, or otherwise became possessed of, a large amount of the county bonds aforesaid, and now claims said bonds as his own property; that said Inman obtained said bonds without paying their value, and at rates unauthorized by the said company, and without the approval of said company; that said Inman, whilst a director in said company and one of the trustees to whom the aforesaid mortgage is alleged to have been executed, obtained possession of about

$213,000\frac{00}{100}$ of said alleged first mortgage bonds, for which it is said he advanced to said company about the sum of sixty-six thousand dollars, and he now claims to own said bonds. These defendants further say that said Inman has been guilty of a breach of trust in speculating in the assets of said company, and that his conduct, and that of others to be hereinafter referred to, has been such as to
146 place the affairs of the said company in their present condition of financial distress and embarrassment, and to defeat these defendants and other contractors of said company in their efforts to obtain the money justly due them from said company for work done upon, and materials furnished for, said road. These defendants, further answering, say that they are informed, and believe it to be true, that The Spartanburg, Union and Columbia Railroad Company, a corporation created by and under the laws of South Carolina, and having its principal place of business somewhere in the said State of South Carolina, is in possession of about $224,000\frac{00}{100}$ of the said alleged first mortgage bonds of said company, for which said corporation claims to have advanced to The Spartanburg and Asheville Railroad Company, in money, and hire of rolling stock, &c., about the sum of $112,000.00; that at the time said The Spartanburg, Union and Columbia Railroad Company obtained said bonds the said W. H. Inman was a large stockholder and a director in said last-named company, and also a director in the said The Spartanburg and Asheville Railroad Company, and a trustee named in said alleged mortgage; that D. R. Duncan was, as these defendants are informed, and believe it to be true, at the same time a director in said The Spartanburg, Union and Columbia Railroad Company, and president of the Spartanburg
147 and Asheville Railroad Company; that G. Cannon was, as these defendants are informed & believe it to be true, a director in the Spartanburg, Union and Columbia Railroad Company, and also a director in the Spartanburg and Asheville Railroad Company at the time said The Spartanburg, Union and Columbia Railroad Company obtained said bonds; that R. Y. McAden was at said time a director in or president of the said The Spartanburg Union and Columbia Railroad Company, and a stockholder in the Spartanburg and Asheville Railroad Company, and was familiar with the business and affairs of both companies as these defendants are informed and believe to be true; that said McAden, as these defendants are informed and believe, was one of the chief movers in the stockholders' meeting of the Spartanburg and Asheville Railroad Company, at which it was decided to mortgage said road, and declared in said meeting that the first mortgage bonds of said last-named company ought to sell for eighty cents in the dollar, and that he would take fifty thousand dollars of them at that price, and that he would not have one of them for less than eighty cents in the dollar; and at said stockholders' meeting, as these defendants are advised and believe to be true, D. R. Duncan, then and ever since presi-
148 dent of the Spartanburg and Asheville Railroad Company, declared that he would resign his office of president before he would sell one of said bonds for less than eighty cents in the

dollar; and these defendants further say that they are informed and believe it to be true that it was the understanding of the stockholders at said meeting and the board of directors of said company that none of said bonds were to be disposed of at less than eighty cents in the dollar; but these defendants say that they are informed and believe it to be true that in the face of the said declarations of said McAden and Duncan, and said understanding of the stockholders and board of directors of said company, the said Duncan, president of said company, without authority of said stockholders, and without consultation with or the approval of the board of directors, did dispose of about $633,000.00 of said bonds at an average of less than fifty cents in the dollar; that he placed in possession and control of said W. H. Inman about $213,000.00 of said mortgage bonds, and received therefor about the sum of $66,000.00, & no more; that he placed in possession and control of said R. Y. McAden, president of said The Spartanburg, Union & Columbia Railroad Company about $224,000.00 of said bonds, and received therefor not more than fifty cents in the dollar. These defendants,

149 further answering, say that they are informed and believe it to be true that Alfred Austell, a citizen and resident of Georgia, was at the times hereinafter mentioned a ditector in the Atlanta Rolling Mills Company and a stockholder in the Spartanburg and Ashville Railroad Company; that said Austell was present in the said general meeting of stockholders of said railroad company, at which it was determined to mortgage said road, and participated in said meeting, and knew that it was understood the said first mortgage bonds were not to be disposed of at less than eighty cents in the dollar; that through the influence of said Austall the said D. R. Duncan, president of the said The Spartanburg and Ashville Railroad Company, ceased to purchase iron for said road in New York and purchased from the said Atlanta Rolling Mills Company; that said Duncan, well knowing what had been understood by the stockholders and board of directors of said railroad company as to the rates at which he should dispose of said bonds, placed in possession of said Atlanta Rolling Mills Company $110,000.00 of said bonds as security for about $55,000.00, knowing at the time that said railroad company had no means by which to redeem said bonds; that said Austell, being a director in said Atlanta Rolling Mills Company, had full opportunity and means of knowing all about the condition of the affairs of The Spartanburg and Ashville

150 Railroad Company; that he was largely interested, as these defendants are informed and believe, in the Spartanburg, Union, and Columbia Railroad Company, of which said Duncan was a director, and was frequently in Spartanburg, where the principal office of the Spartanburg and Ashville Railroad Company is kept, and had frequent opportunities to consult with said Duncan as to the condition of the affairs of said company. These defendants further answering, say that Vincent R. Tommey, one of the complainants herein, was at the time said bonds were placed in the possession of the Atlanta Rolling Mill Company, president of said The Atlanta Rolling Mills Company, and had the means

and opportunity of ascertaining what authority or right the said Duncan had to dispose of said bonds at such ruinous rates; that the said Tommey, as these defendants are informed and believe, obtained the five bonds to which he claims title from said The Atlanta Rolling Mills Company, of which he was president, and whilst he was president.

These defendants further answering say, that they are informed and believe it true that Geo. W. Williams, of Charleston, in the State of South Carolina, is, and was at the times hereinafter named, a director in the Spartanburg and Asheville Railroad Company, and whilst acting as such director he obtained, by purchase of otherwise, some amount of said mortgage bonds not known to these defendants, for which he paid not more than fifty cents in the
151 dollar. These defendants further answering say that they are advised and believe that neither the plaintiff, Vincent R. Tommey, nor the plaintiff, The Atlanta Rolling Mills Company, is entitled to the relief prayed for in the said bill of complaint, or any part thereof; that they, nor either of them, presented the coupons due the 1st day of January, 1878, at the place where they were payable, as the defendants are advised and believe. These defendants further answering say, that neither they nor any other contractor, as far as these defendants know, have taken any action to make it necessary for the protection of the plaintiffs, or any other of the holders of said bonds, to have a receiver of said road appointed for any purpose whatever, or to have a sale (or foreclosure by suit of said mortgage) of the property and road. These defendants further answering say, that it was not on account of any action taken by the contractors of said railroad company that the work on said road stopped, but that it was because of the mismanagement of the affairs of said company by those with whom its business was intrusted and others who were permitted to interfere in its business.

These defendants further answering say, that the said The Spartanburg and Asheville Railroad Company is justly indebted to them as partners, under the name and style of Fry & Deal, in the sum of six thousand three hundred and thirty-five $\frac{16}{100}$ dollars
152 ($6,335.16) and interest, for materials furnished for and work performed upon trestles nine, ten, eleven, and twelve on said road; that on or about the 3rd day of August, 1878, these defendants filed a notice of lien upon said trestles and other property claimed by said railroad company in the county of Polk, and State of North Carolina, a copy of which notice is hereto annexed and prayed to be taken as a part of this answer; that on the 18th day of October, 1878, these defendants began an action against said railroad company for the purpose of enforcing their said lien and recovering the money justly due them from said company as aforesaid.

These defendants submit that this court ought not, by injunction, a receiver, or otherwise, to interfere with the said action of defendants; that the property upon which they claim a lien is in the custody of the law, and was so prior to the bringing of this bill of complaint by the plaintiffs; that they have a right to have the question

of the lien claimed by them on said property adjudicated by the superior court of the county of Polk, and State of North Carolina, where their action for that purpose is now pending.

The defendants further submit that this court has no power to restrain or enjoin said State court from proceeding in said action to pronounce judgment & to enforce its said judgment by proper and regular process.

These defendants further answering say, that they are ad-
153 vised and believe it to be true that their lien upon said property mentioned and described in copy of the notice of lien hereto attached, is superior to the claim or lien of any other creditor of said Railroad Co., and pray to be examined in respect thereof, if in the opinion of this honorable court it shall be proper and necessary.

These defendants further answering say that they have not at any time interfered with, or offered so to do, any of the property of said railroad company, otherwise than to claim their said lien upon so much of it as is specified in their said notice of lien, and with such portion only, by action regularly begun in the courts of North Carolina.

And these defendants deny all and all manner of unlawful combination and confedracy wherewith they are by the said bill charged, without this, that there is any other matter or cause or thing in the said complainants' said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dissmissed with their reasonable costs and charges in this behalf most wrongfully sustained.

154 JAS. H. MERRIMON.
Sol. for Defendants.

J. A. Deal, one of tha defendants in the above suit, being duly sworn before me, maketh oath that the facts stated in the foregoing answer to be of his own knowledge are true, and that those otherwise stated he believes to be true.

J. A. DEAL.

Sworn to & subscribed before me, this Jan'y 31st, 1879.
H. C. COWLES, *Clk.*
By JOSIAH D. COWLES, *D. C.*

155 Ex. "A."

J. E. FRY & J. A. DEAL, Partners under the firm of Fry & Deal, Pl'ff.,
against
THE SPARTANBURG & ASHEVILL R. R. COMP'Y, Def't.

The plaintiffs, partners under the name of Fry & Deal, allege—

1st. That on the second day of June, 1877, they entered into an agreement with the defendants in words & figures following, to wit:

This agreement entered into between The Spartanburg & Asheville R. R. Co. on the one part, & Fry & Deal on the other part, witnesseth, that the said Fry and Deal propose and agree on their part to contract and *filed* under the direction & supervision of the chief engineer of the S. & A. R. R. Co. the trestle on said road on the Pacolett division, to wit, Nos. 9, 10, 11, & 12, which includes the crossing of North Pacolett river at the following prices, to wit, for all square timber, the sum of twenty dollars per thousand; for all round timber the sum of fifteen per thousand; and the foundations for said trestles are to be paid for at the chief engineer's estimate, the payments for said work to be made from time to time as the same progresses, and the said Spartanburg and Asheville R. R. Company of the other part agrees to the specifications & terms as set forth in the foregoing. Signed in duplicate, this 2nd of June, 1877.

[SEAL.] By D. R. DUNCAN, *President.*

156 FRY & DEAL.

II. That in pursuance of said agreement they, the plaintiffs, did furnish the material, construct and build said trestles Nos. 9, 10, 11, & 12, situated in Polk county, between the date of said agreement and the 17th of June, 1878, and there is due the plaintiffs upon said agreement the sum of six thousand three hundred and thirty-five dollars & 16 cts. ($6,335.16), as per copy of account for materials furnished and work done will fully appear. Said copy is hereto attached and marked A.

This claim is filed as a lien & notice of lien upon said trestles Nos. 9, 10, 11 & 12 on said road, and upon land whereon said trestles are constructed and built, and upon the property of said railroad company in said county of Polk.

FRY & DEAL.

Sworn & subscribed to before me, Aug't 3d, 1878.

R. S. ABRAMS,
C'lk Sup'r Court Polk Co.

Copy A. Final.

Spartan & Asheville Railroad.

Estimate of work done from the month of June, 2nd day, 1877, to June 17th, 1878, on sec. Nos. ——, trestles No. 9, 10, 11 & 12 on Pacolett division. Residence by Fry & Deal.

B. M. feet trestle 233,127, square lumber,	$20		$4,662 54
B. M. feet trestle 95,273, round "	$15		1,429 09
B. M. feet trestle 14,968, "	$10		149 68
157 B. M. feet trestle 3,500, lumber			21 00
Cost of foundation			1,329 53
Total amount			$7,591 84
Deduct payments			1,256 68
			$6,335 16

I certify that this estimated is correct. Signed, approved.
T. COLEMAN, *Chief Engineer.*

Recorded Aug't 3d, 1878. A. S. ABRAMS,
C'lk Sup'r Court Polk Co.

NORTH CAROLINA, *Polk County:*

I, A. S. Abrams, clerk of the superior court in and for said county, do hereby certify that the foregoing is a true copy of the mechanic's lien of Fry & Deal, as now recorded in Lien Book, p. 160 & 1.

In testimony whereof, I have hereunto set my hand and seal of office, in Columbus, this 9th day Jan'y, A. D. 1879.

[SEAL.] A. S. ABRAMS,
C'lk Sup'r Court Polk Co.

And on said 31st day of January, 1879, E. Clayton files his answer in our said court; which said answer is in the words and figures as follows, to wit:

158 In the Circuit Court of the United States for the Western Dist. of N. C. In Equity.

The separate answer of E. Clayton, one of the defendants to the bill of complaint of Vincent R. Tommey and Atlanta Rolling Mill Company, complamants:

This defendant, reserving to himself all right of exception to the said bill of complaint, for answer thereto says: That he admits that the Greenville and French Broad Railroad Company was a corporation created by an act of the Legislature of North Carolina, and that the Spartanburg and Asheville Railroad Company was a corporation created by an act of the Legislature of South Carolina; and he admits that said two companies, on or about the 31st day of July, 1874, made an agreement to consolidate; but he denies that the said two companies ever effected a consolidation under said agreement so as to destroy the existence of said two companies, or either of them, and form a new company, or so as to invest the said The Spartanburg and Asheville Railroad Company with the franchises, powers, rights, and privileges of the Greenville and French Broad Railroad Company. This defendant further answering, says that he admits that the Spartanburg and Asheville Railroad Company determined to mortgage its said road, and that the stockholders of the said company in general meeting assembled, by a
159 majority vote of said stockholders, by resolution authorized the president and board of directors of said company to make a mortgage of said road, but he denies that said president and board of directors ever made a mortgage of said road in pursuance of and according to its provisions of said resolution. This defendant further says that he is informed and believes it to be true, that the mortgage mentioned and described in the said bill of complaint was never made by the president and board of directors of said company, but was prepared and signed by the president and secretary of said company, and was never afterward submitted to said

board of directors for their approval; and he further says that he is informed, and believes it to true, that the said president caused to be issued a large amount of bonds, purporting to be bonds of said company, and disposed of the same according to his own discretion, without advice from the board of directors of said company; he further says that he is informed, and believes it to be true, that said president had disposed of the greater portion of said alleged bonds before the said alleged mortgage was registered. This defendant, further answering, says that he denies the right of the plaintiffs, or either of them, to maintain this suit, because he says that if the provision in the said alleged mortgage deed, by which it is alleged in the bill of complaint the entire principal and interest of said alleged bonds became due and payable on account of default of the said company in the payment of the interest on
160 said alleged bonds, is of any validity, the said default could be taken advantage of only by the persons named as trustees in said alleged mortgage, and he is informed and believes that said trustees have not taken advantage of said default, unless it be that the present suit was begun at their instigation.

This defendant, further answering, says that he is informed, and believes it to be true, that of the said alleged bonds the said Atlanta Rolling Mill Company obtained possession of about $110,000 as a pledge to secure the payment of a sum of money claimed against the said The Spartanburg and Asheville Railroad Company, and that said sum of money was not due at the time this suit was begun; that said Atlanta Rolling Mill Company has never held said alleged bonds otherwise than as collateral security for said claim; that the said Vincent R. Tommey was, at the time of the pledge of the said alleged bonds, president of the said Atlanta Rolling Mill Company, and whilst acting as such president, as defendant is informed and believes, pretended to purchase five of said bonds; but this defendant denies that he is the owner of said bonds or that he has any such right to the same as entitles him to maintain this suit; this defendant verily believes and avers that the said bonds were passed to said Tommey only to enable him to become a party to this suit.

This defendant, further answering, says that he denies that he ever did any act to make it necessary that a receiver should
161 be appointed of the said The Spartanburg and Asheville Railroad Company for any purpose whatever; and he denies that it was by any act of his, or any other contractor of said railroad company so far as this defendant knows, that the work upon said railroad was stopped. This defendant, further answering, says that the Spartanburg and Asheville Railroad Company is justly indebted to him for work done on said company's road in the sum of twenty-five thousand eight hundred and forty-eight $\frac{86}{100}$ dollars, and interest on $24,044.62 from Nov. 16, 1878; and that on the 22d day of Oct., 1878, he began an action against said company in the superior court of Polk county to recover said debt, and that said action is now pending in said superior court of Polk county.

This defendant, further answering, says that he is the owner in

fee-simple, as he is advised and believes, of a half interest in a portion of what is claimed by the said railroad company as road-bed and right of way situated in the county of Polk; that said company was in possession of said defendants' interest, on the 18th day of October, 1878, and, as defendant was advised, holding the same unlawfully, and this defendant on said day began an action against said company to recover the possession of said interest, which said action is still pending in the superior court of Polk county, in the State of North Carolina; that he is informed and believes, the *the* receiver (appointed in this cause) of the said railroad company,
162 has filed answers or demurrers in defendants' said actions in the county of Polk, under an order made by this court in this cause.

This defendant, further answering, says that the allegation in the said bill of complaint, that he wrongfully and fraudulently, and for a trifling consideration, procured or claimed to have procured titles to portions of said roadway, is utterly false, and he denies that the title procured by him is invalid, but says that he is advised and believes his said title is valid and good; and he denies that he procured such title with the design of interfering inequitably and fraudulently with the rights of the plaintiffs, or any other persons whatsoever, but says that the portion of land over which this defendant did work for said company in the said county of Polk, was owned by one Sarah Cowuth for life only; that said company procured through its agent in said county a conveyance of said right of way from said Sarah Cowuth for her life, but never obtained title or right to said land from the remainder; that no steps have ever been taken by said company to have said land condemned to its use; and that said company, as defendant is advised and believes, has no right in law or equity to said land, or the road-bed and superstructure thereon; and this defendant further says that he is advised, and believes, that the said The Spartanburg and Asheville Railroad Company has no power or authority to condemn the lands of any citizen of North Carolina for the use of its said road, either as right of way or otherwise; that he is advised, and believes it to be true, that no law of North
163 Carolina ever conferred upon said railroad company the authority to condemn the lands of citizens of said State, to be used by said company for a railroad or any other purpose.

This defendant, further answering, says he is informed, and believes it to be true, that while only the names of Vincent R. Tommey and the Atlanta Rolling Mill Company appear as complainants in the said bill of complaint, yet the said suit is being prosecuted as well by the said W. H. Inman and by The Spartanburg, Union and Columbia Railroad Company, a corporation created by the laws of the State of South Carolina; that the said Inman claims to own about two hundred and thirteen thousand dollars of the said alleged mortgage bonds, and the said The Spartanburg, Union and Columbia Railroad Company claims to own about two hundred and twenty-four thousand dollars of said alleged bonds; that said Inman, at the time he obtained said bonds, obtained them

from the president of the said The Spartanburg & Asheville Railroad Company, and paid only $66,000.00 therefor; that at the time said Inman obtained said bonds he was a director of the said The Spartanburg and Asheville Railroad Company, and one of the trustees named in the said alleged mortgage, and had accepted said trusteeship; that at the time the said The Spartanburg, Union and Columbia Railroad Company obtained the said bonds claimed by it,
164 the said company obtained the same from the president of the said The Spartanburg and Asheville Railroad Company; that the said president of the said Spartanburg and Asheville Railroad Company, at said time, was a director in the said The Spartanburg, Union and Columbia Railroad Company, and there were at said time other directors of the Spartanburg and Asheville Railroad Company who were directors of said The Spartanburg, Union & Columbia Railroad Company. This defendant, further answering, says he is informed, and believes it to be true, that the president of the Spartanburg and Asheville Railroad Company was induced to purchase iron from the said The Atlanta Rolling Mill Company by persons connected with the Spartanburg, Union & Columbia Railroad Company, and who were likewise at the same time connected either as directors or stockholders with the Spartanburg & Asheville Railroad Company and the Atlanta Rolling Mill Company. This defendant, further answering, says he is informed, and believes it to be true, that *that* none of the said alleged mortgaged bonds mentioned and described in said bill of complaint were ever put upon the market and sold, or became the objects of purchase and sale, and denies that any such disposition was ever made of said alleged bonds, or any of them; but he says that he is informed, and believes it to be true, that the control and management of said alleged mortgaged bonds was assumed by the president of the Spartanburg and
165 Asheville Railroad Company, who had little or no acquaintance in the markets of the country where such securities were usually disposed of, and sought advice from the said W. H. Inman, who lived in the city of New York, and had great experience in the business of buying and selling such securities, and extensive acquaintance in the markets of the country; that said Inman, although a director in the said The Spartanburg & Asheville Railroad Company, and a trustee of said company in respect of said alleged bonds, instead of using his experience and acquaintance in the money markets of the country to dispose of the bonds to the best advantage, got possession of the said $213,000.00 of said bonds for less than a third of their par value, and now retains the said bonds and claims them as his own; and this defendant further says that the said The Spartanburg, Union and Columbia Railroad Company obtained possession of said bonds claimed by it for about one-half the par value of the same, or less, and that the said Atlanta Rolling Mill Company obtained possession of the bonds claimed by it as collateral security for about $40,000 or $45,000.00 worth of railroad iron.

The defendant, further answering, says that the Spartanburg, Union and Columbia Railroad Company's road leads from the town

of Spartanburg, in the State of South Carolina, to the town of Alston, in said State; that said company is, and has been all along, anxious and eager to become the owner of the Spartanburg and Asheville railroad, so as to extend its said road to Ashe-
166 ville in the State of North Carolina, and perhaps thence to some point upon the line of the East Tennessee and Virginia railroad; that unless said Spartanburg, Union & Columbia Railroad Company can make some such extension of its said road, its said road will never be of any great value; that in order to enable said last named railroad company to become the owner of the said Spartanburg and Asheville railroad, as this defendant is informed and believes, the principal owners of said Spartanburg, Union and Columbia Railroad Company combined and conspired to get possession of the said alleged mortgage bonds for as little money as possible, in order that said Spartanburg and Asheville Railroad Company might become financially embarrassed, and make default in payment of the interest on said bonds, and thus enable them to foreclose the said mortgage and become the owners of said road at comparatively small cost; and this defendant verily believes and avers that, in pursuance of said fraudulent combination and conspiracy, the said Inman, the said The Spartanburg, Union and Columbia Railroad Company, through its officers and managers and large stockholders, and the said Atlanta Rolling Mill Company, through its officers and stockholders, and others, came into possession of, and now claim to own, said alleged bonds; that in further pursuance of said fraudulent combination and conspiracy, the said Inman, The Spartanburg,
167 Union and Columbia Railroad Company, through its said officers, agents, and stockholders, and the Atlanta Rolling Mill Company, through its said officers, agents, and others, are seeking through this suit to have said alleged mortgage foreclosed, and that it is their purpose to purchase said road and pay for the same out of what they claim to be due them from the Spartanburg & Asheville Railroad Company, and thus defeat the contractors who have done the work on said road of their first debts, and render worthless the stock of said company. This defendant, further answering, says he is informed, and believes it to be true, that R. Y. McAden, president of the said Spartanburg, Union and Columbia Railroad Company, on behalf [of] said company, long before the bringing of this suit, assumed to own said Spartanburg & Asheville railroad, and through his superintendent, James Anderson, (now receiver,) undertook, and did let, to contract the bridge at Green river, on said road, and did order and direct where the said road should stop and the depot be built; that some time in the month of Oct. last said McAden acting as president of said Spartanburg, Union and Columbia Railroad Company, and for said company, ordered the iron of said Spartanburg & Asheville Railroad Company, which had not been laid down upon the Spartanburg and Asheville railroad, but which had been taken to the place, in Henderson county, where it was to be used to complete the road to a place known as McMinns,
168 to be removed to the road of which said McAden was president, and this he did without the permission of any one au-

thorized to give such permission. This defendant, further answering, says that he is informed and believes that said R. Y. McAden and said W. H. Inman encouraged the contractors on said road to press forward their work and they should be paid every dollar due them; that this defendant was informed of these assurances whilst engaged upon his said work, and was greatly encouraged to continue his said work on account thereof, notwithstanding he was receiving only a very small portion of the amount due him on said work.

This defendant, further answering, says he was a creditor of the said The Spartanburg and Asheville Railroad Company prior to the registration of the mortgage mentioned and described in the said bill of complaint, as he is informed and believes, to the full amount of the principal of his said debt as hereinbefore set forth, and the full amount of the principal of said debt was due and owing to this defendant by said company prior to the registration of said mortgage, and as against him and other creditors of said company who were such before the registration of said mortgage, the said mortgage, as this defendant is advised, is not now, and was not at the time of its execution, valid to pass any property of said company. This defendant, further answering, says that he is advised that in order to do complete justice to all parties concerned, if in the opinion of this honorable court the said bill of complaint should
169 not be dismissed, it is necessary that the Spartanburg, Union and Columbia Railroad Company should be made a party to this suit, and that the other holders of the said alleged mortgage bonds should also be made parties. Further answering, says, that he is advised and believes that Geo. W. Williams, a resident of the city of Charleston, and State of South Carolina, is a holder of some amount of said bonds, and that at the time he came into possession of said bonds he was a director of said Spartanburg and Asheville Railroad Company, and received said bonds directly from the president of the Spartanburg and Asheville Railroad Company, paying or lending therefor not more than fifty cents in the dollar of said bonds. This defendant submits that this honorable court ought not to interfere by injunction or otherwise with his actions against the said The Spartanburg and Asheville Railroad Company now pending in the superior court of the county of Polk, and State of North Carolina, hereinbefore referred to. This defendant prays this honorable court, if the bill of complaint shall not be dismissed, to make a decree compelling the said W. H. Inman, The Spartanburg, Union and Columbia Railroad Company, the Atlanta Rolling Mill Company, the said Vincent R. Tommey, and the said Geo. W. Williams to surrender to the court here the bonds of said Spartanburg and Asheville Railroad Company, to be disposed of as this honorable court may direct, or that said persons and corporations be compelled to pay for said bonds the full par value thereof, and that the
170 contracts made between said persons and corporations and the president of the said Spartanburg and Asheville Railroad Company be declared by decree of this honorable court to be fraudulent and void.

And this defendant further prays for such other relief as he and

the other contractors of said Spartanburg and Asheville Railroad Company may be entitled to, and he further prays the leave of the court here (if he cannot have the relief he seeks in the manner and form in which he has herein prayed the same) to permit him to file his cross-bill in this suit to obtain such relief.

And having fully answered, he prays to be hence dismissed with his costs in this behalf incurred.

J. H. MERRIMON,
Sol. for Def't.

STATE OF NORTH CAROLINA, *Buncombe County:*

E. Clayton being duly sworn, says that the matters of fact stated in the foregoing answer of his own knowledge are true, and those stated on information and belief he believes to be true.

E. CLAYTON.

Sworn to and subscribed before me, this 28th day of January, 1879.

[SEAL.] E. W. HERNDON,
Propate Judge and Clerk Sup'r Court of Buncombe County.

171 And on another day, to wit, February 3rd, 1879, the defendants, The Board of Commissioners of Buncombe County, file their answer in said court, which said answer is in words and figures as follows, to wit:

172 In the Circuit Court of the United States for the Western District of North Carolina.

The answer of the Board of Commissioners of Buncombe County, one of the defendants, to the bill of complaint of Vincent R. Tommey and The Atlantic Rolling Mill Company, complainants.

This defendant, reserving to itself all right of exception to the said bill of complaint, for answer thereto says: That on or about the 11th day of August, 1875, the county of Buncombe, through its regularly-appointed agents, subscribed to the capital stock of the Spartanburg and Asheville Railroad Company the sum of one hundred thousand dollars, and paid said subscription between the date on which it was made and the — day of ——, 187–, in bonds of the said county, issued from time ——, and delivered to the agents of said railroad company. Further answering, this defendant says: That in the defence of this suits the rights and interests of said county have been neglected, and the stock of said county in the said railroad company is in great danger of being lost entirely; that the officers and agents of said railroad company have neglected and refused to defend this suit, although, as this defendant is informed and believes, there is a good and valid defense to the same; that because of the failure of the said officers and agents of said railroad company to answer the said bill of complaint, and
173 to endeavor to protect the interests of the said county of Buncombe, as a stockholder in said railroad company, this de-

fendant asked leave of the court to become a party defendant to the said suit, and to answer and make defence thereto, and leave was duly granted by the court at its December term, 1878, at Charlotte. And this defendant now, on behalf of the said county of Buncombe, as a stockholder in said, The Spartanburg and Asheville Railroad Company, and on behalf of all other stockholders of said company who will come by leave of the court and join in this defence, makes answer to the said bill of complaint and says:

That this defendant admits that the Spartanburg and Asheville Railroad Company was a corporation created by an act of the Legislature of South Carolina; that the Greenville and French Broad Railroad Company was a corporation created by an act of the Legislature of North Carolina, and that the boards of directors of said two corporations, on or about the 31st day of July, 1874, made an agreement to consolidate the said two corporations; but this defendant denies that said agreement had the effect to create a new corporation under the name of the Spartanburg and Asheville Railroad Company. This defendant, further answering, says that it was supposed that the Spartanburg and Asheville Railroad Company, by such an agreement to consolidate with the Greenville and French Broad Railroad Company, had acquired a franchise

174 and powers, rights, and privileges such as those possessed by the Greenville and French Broad Railroad Company prior to the date of said agreement to consolidate; and that the county of Buncombe subscribed to the capital stock of said The Spartanburg and Asheville Railroad Company under the belief that said company was by the agreement to consolidate with the said The Greenville and French Broad Railroad Company invested with the franchises, rights, powers, privileges, immunities, and all property of the said last named company, but this defendant is advised and believes that said The Spartanburg and Asheville Railroad Company never acquired by said agreement to consolidate any franchises, powers, priviles, or immunites in addition to such as were conferred upon said corporation by the act of the Legislature of South Carolina creating it, and acts of the Legislature of said State of South Carolina amendatory of said act.

This defendant, further answering, says that it is admited that the stockholders of the said The Spartanburg and Asheville Railroad Company, in general meeting assembled, by resolution authorized the president and board of directors of said company to mortgage said company's road, and franchises, and other property, but this defendant says that said mortgage mentioned and described and set forth in the said bill of complaint was never authorized by the stockholders of said railroad company or otherwise.

175 This defendant, further answering, says that of the first mortgage bonds of the said The Spartanburg and Asheville Railroad Company one W. H. Inman, a defendant in this suit, claims to own about two hundred and thirteen thousand dollars; that of said bonds The Spartanburg, Union and Columbia Railroad Company, a corporation having its president residing in the city of Charlotte, in the State of North Carolina, claims to own about two hun-

dred and twenty-four thousand dollars; that of said bonds the Atlanta Rolling Mill Company, one of the complainants in this suit, claims to own about one hundred and ten thousand dollars; that George W. Williams, of the city of Charleston, in the State of South Carolina, claims to own some amount of said bonds, but what amount this defendant is not informed.

This defendant, further answering, says that said W. H. Inman, at the time he obtained possession of the said bonds claimed by him, was a director in the said The Spartanburg and Asheville Railroad Company, and a trustee in the mortgage hereinbefore referred to, and had accepted said trusteeship; that his relation to said railroad company and its creditors was one of trust and confidence; that he was a man of extensive experience and acquaintance in the money markets of the country, and markets for railroad bonds and other securities;

176 had large wealth and was possessed of great influence among men of wealth who made it a business to speculate in such securities; that it was his duty to use his influence & experience for the benefit of said railroad company, but instead of doing so he wilfully and fraudulently violated the trust and confidence reposed in him by said company, and took advantage of his position in said company to obtain the bonds claimed by him for less than one-third of their par value; that the said Inman obtained said bonds directly from the president of said company, and before they had ever passed out of the hands to said company to any one else; and this defendant says that in his attempt to become the owner of said bonds for less than their value he was guilty of a gross breach of trust, and that the transaction between said Inman and the president of said company in respect of said bonds was fraudulent and void. This defendant, further answering, says: That the said W. H. Inman, and R. Y. McAden, and Alfred Austell are largely interested in the Spartanburg, Union and Columbia railroad; that the said last-named company is a stockholder in the Spartanburg and Asheville Railroad Company; that said Inman is, and was at the times hereinafter mentioned, a director in the Spartanburg, Union and Columbia Railroad Company; that said R. Y. McAden is, and at the times hereinafter mentioned was, the president of the Spartanburg, Union

177 and Columbia Railroad Company, and a stockholder in the Spartanburg and Asheville Railroad Company, and had great familiarity with the business and affairs of said last-named company, and was a confidential and trusted adviser of the president of the said last-named company, and had knowledge of the financial condition of said last-named company, and knew that said company was in great need of funds to carry on its work; that said Alfred Austell was, at the times hereinafter mentioned, a director in the Spartanburg, Union and Columbia Railroad Company, and a stockholder in the Spartanburg and Asheville Railroad Company, and had abundant opportunity to become familiar with the affairs and business of said last-named company, and was familiar with its said business and affairs, and knew of its financial distress and embarrassments; and other directors of said Spartanburg, Union and Columbia Railroad Company were, at the time said company obtained the

said bonds claimed by it, directors and stockholders in the Spartanburg and Asheville Railroad Company, and had full knowledge of the business and affairs of said last-named company, and of its financial distress and embarrassment; that the said officers and agents of the said The Spartanburg, Union and Columbia Railroad Company, taking advantage of their knowledge of the affairs and business of the said The Spartanburg and Asheville Railroad
178 Company, and of its financial embarrassment and distress, and colluding with the officers and agents of the said The Spartanburg and Asheville Railroad Company, some of whom, as before shewn, were at the same time officers and agents of the said The Spartanburg, Union and Columbia Railroad Company, fraudulently procured from the president of the said The Spartanburg and Asheville Railroad Company the said two hundred and twenty-four thousand dollars of said bonds claimed by said The Spartanburg, Union and Columbia Railroad Company, advancing to said Spartanburg and Asheville Railroad Company not more than fifty cents in the dollar of said bonds; and this defendant says that the transaction between the president of the said The Spartanburg and Asheville Railroad Company and the officers and agents of the said The Spartanburg, Union and Columbia Railroad Company, by which said last-named company became possessed of said bonds, were fraudulent; that said transactions were had in pursuance of a fraudulent combination and conspiracy between the officers and agents of one of said companies with officers and agents of the other of said companies, occupying confidential relations to both of said companies, and the purposes of said fraudulent combination were to place the Spartanburg and Asheville Railroad Company in a condition of financial embarrassment from which it could not
179 extricate itself, and then cause the said mortgage to be put in suit, obtain a decree of the court to sell the road, and purchase and become the owners of it for comparatively little money, and then connect said road with the Spartanburg, Union and Columbia railroad.

This defendant, further answering, says that Alfred Austell was, at the time the said Atlanta Rolling Mill Company became possessed of the said bonds claimed by it, a director in said company and a stockholder in said The Spartanburg and Asheville Railroad Company, and was familiar with the affairs and business of said last-named company and knew it was financially greatly embarrassed; and he also knew that the president of the said The Spartanburg and Asheville Railroad Company had no authority to sell or pledge the bonds of said company for less than eighty cents in the dollar; and he also knew of the transactions between the said W. H. Inman and the officers and agents of the Spartanburg, Union and Columbia Railroad Company and the president of the Spartanburg and Asheville Railroad Company in respect of said bonds, and knew that the president of said Spartanburg and Asheville Railroad Company was making unauthorized use and dispositions of said bonds, and that under such management the said The Spartanburg and Asheville Railroad Company would

necessarily in a little while fall into a condition of financial ruin, and its property become an easy prey for those who claimed to own its mortgage bonds; that said W. H. Inman and others occupying confidential relations to the said the Spartanburg and Asheville Railroad Company were, at the time the said Atlanta Rolling Mill Company obtained said bonds, interested in said company; that said Austell, Inman and others interested in said Atlanta Rolling Mill Company, taking advantage of their relations to the said the Spartanburg and Asheville Railroad Company and of their intimate knowledge of the financial condition of said last named company, and their acquaintance with its affairs and business, procured the president of said last-named company to deliver to the said Atlanta Rolling Mill Company the said one hundred and ten thousand dollars of said bonds as collateral security for about forty thousand dollars worth of railroad iron, or less, well knowing that said railroad company was already hopelessly involved by the inefficient management of its financial affairs and could never redeem said bonds, and well knowing that said president of said railroad company had no authority to make such pledge of said bonds; that this transaction in bonds with the said Atlanta Rolling Mill Company was in pursuance and furtherance of a combination between some of the officers and agents of the said The Spartanburg, Union & Columbia Railroad Company and some of the officers and agents of the Spartanburg and Ashville Railroad Company (said persons being interested in both companies and also interested in the Atlanta Rolling Mill Company) to bring about the financial ruin of the said The Spartanburg and Asheville Railroad Company, and thus secure its said road as an extension or addition to the said The Spartanburg, Union and Columbia Railroad Company. This defendant, further answering, says that Geo. W. Williams, a citizen of Charleston, in the State of South Carolina, holds some amount of said bonds, for which he advanced not more than fifty cents in the dollar; that he obtained said bonds from the president of the said The Spartanburg and Asheville Railroad Company before the said company had ever parted with them to any one else, and at the time he obtained them he was a director in the said The Spartanburg and Asheville Railroad Company, and knew or had ample opportunity to know that said president was not authorized to dispose of said bonds at less than eighty cents in the dollar. This defendant, further answering, says: That the president of the Spartanburg and Asheville Railroad Company, at the time he took control of the said mortgage bonds of said company, had no experience in the management of such securities, and no acquaintance in the markets where such securities were usually disposed of; that he had little or no capacity for the management of so large an amount of bonds; that he was at said time a director in the Spartanburg, Union and Columbia Railroad Company, and was in constant communication with the president and directors of that company, and intimately associated with them; that the president of said last-named company, and W. H. Inman and Alfred Austell, directors in said company, were at said

time, and are yet, men of wealth and influence, and have great experience in financial affairs; that said president of the Spartanburg & Asheville Railroad Company relied greatly upon them and was much under their influence and control; that said McAden, Inman and Austell took advantage of their influence and control over said president, and of their knowledge of the business & affairs of the said Spartanburg and Ashville Company and of their confidential relations to said company, and were chiefly, if not entirely, responsible for the financial ruin which overtook said railroad company.

This defendant, further answering, says: That said Inman, individually, and said McAden, Inman, and Austell, as officers and agents of the Spartanburg, Union and Columbia Railroad Company, and for themselves and said company, obtained from the president of said The Spartanburg and Asheville Railroad Company large
183 amounts of the bonds of the counties of Union and Spartanburg, in the State of South Carolina, and of the bonds of the county of Henderson, in the State of North Carolina, which said bonds had been delivered by said counties to said railroad company in payment of stock subscribed for by said counties in said railroad company; that they obtained said bonds for fifty cents in the dollar or less, well knowing that the president of said company was not authorized to make such disposition of said bonds, and well knowing that such management could only result in the bankruptcy and ruin of said railroad company.

This defendant, further answering, says that the amount paid to the said The Spartanburg and Asheville Railroad Company for stock subscribed for in said company, and the amount which the mortgage bonds of said company ought to have yielded said company, and would by intelligent and proper management have yielded, would by judicious management have been sufficient to complete the road of said company to Asheville, & to supply it with sufficient rolling-stock; but this defendant says that only about forty-two miles of track has been laid upon said road, leaving a distance of about twenty-five miles yet to complete, and the said company has no rolling-stock of any kind whatever.

184 This defendant, further answering, says that Vincent R. Tommey came into possession of the said bonds claimed by him through the Atlanta Rolling Mill Company, and knew how said bonds were obtained by said company; that at the time said company received said bonds he was its president; that the bonds claimed by him were passed to him (whether for a consideration or not this defendant is not informed, except by the said bill of complaint) to enable him to bring this suit.

This defendant, further answering, says that although only the names of the said Tommey and the said Atlanta Rolling Mill Company appear as plaintiffs in the said bill of complaint, yet the said suit was instigated by the said W. H. Inman. The said R. Y. McAden, as president of the Spartanburg, Union and Columbia Railroad Company, and the said Inman and McAden are active in prosecuting said suit, and have employed counsel to aid in its prosecution.

This defendant, further answering, says that it is the purpose of said Inman and McAden and Austell to have the road of the Spartanburg and Asheville Railroad Company sold under a decree of this court, and to become the purchasers, and this they hope to do at comparatively small cost to them.

This defendant further says that the said The Spartanburg
185 and Asheville Railroad Company has been reduced to its present calamitous and hopeless condition in respect to its finances by the fraudulent machinations of the said Inman, McAden, Austell (and others not known to defendant), on their own behalf and for the purpose of getting possession and control of the road of said company; and the said Inman, McAden, and Austell, for themselves and the said corporations hereinbefore named, in which they are interested and of which they are officers, hold and claim about five hundred and forty-seven thousand dollars of the said first mortgage bonds of said company; that not more than twenty-five thousand dollars of said bonds are in the hands of *bona fide* holders for value.

This defendant further says that by a foreclosure of said mortgage and a sale of the road and property of said company this defendant will lose the one hundred thousand dollars of stock owned by said county of Buncombe in said company, and the entire capital stock of said company will become utterly worthless.

This defendant further says that if the present claimants of the bonds of said company were compelled to surrender them to said company, or to pay to said company their full value, the road of said company could be completed to Asheville from Spartanburg,
and equipped with a full supply of rolling stock and every-
186 thing necessary to make it a first-class railroad, and the said company would have left money enough to pay all interest due on said bonds.

This defendant further says that if the said railroad were completed to Asheville there is every reason to believe that the company's income from said road would be sufficient to pay remaining expenses, the interest on said bonds as it falls due, and in addition a fund could be provided to discharge the principal of said bonds in 1897. This defendant submits that the complainants in this bill of complaint are not entitled to maintain this suit, because the defendant says it does not appear that the trustees named in the said mortgage have refused to institute proceedings to foreclose said mortgage, or that said trustees have ever been requested so to do.

This defendant prays the court to require the Spartanburg, Union and Columbia Railroad Company, whose president, R. Y. McAden, is a citizen of North Carolina, and a resident of Charlotte, to be made a party to this suit, to require that said McAden and said Alfred Austell be made parties to this suit, and to require that said Geo. W. Williams be made a party to this suit.

And this defendant prays this honorable court to declare by a decree in this suit that the transactions between said Inman, McAden,
and Austell and the said Atlanta Rolling Mill Company and
187 the said Spartanburg, Union and Columbia Railroad Company and the said Vincent R. Tommey and the said Geo. W.

Williams and the president of the Spartanburg and Asheville Railroad Company are and were fraudulent and void, and to require said holders of the mortgage bonds of said company and of the county bonds which were delivered to said company in payment of stock subscribed for by said counties in said company to account to said company for the full value of said bonds or surrender said bonds to said company.

And this defendants prays for such other and further relief as the facts of this case may entitle the said county of Buncombe to have.

And this defendant, having fully answered, prays to have the said bill of complaint dismissed and to recover costs.

J. H. MERRIMON,
Sol. for Def't.

[SEAL.] J. E. RANKIN,
Ch'm'n B'd Co. Com'rs Buncombe Co., No. Ca.

J. E. Rankin, being duly sworn, says: That he is chairman of the Board of Commissioners of Buncombe County, and that he affixed the common seal of said county to the foregoing answer and signed said answer as said chairman.

Sworn to & subscribed before me, this 1st day of Feb'y, 1879.

[SEAL.] E. W. HERNDON,
Probate Judge.

188 And on said day, to wit, February 3rd, 1879, the defendants, S. M. Rice & R. L. Coleman, partners under the name and style of Rice and Coleman, file their answer in said court, which said answer is in words and figures as follows, to wit:

189 Circuit Court of the United States, Western District of North Carolina. In Equity.

To the honorable the judges of the circuit court of the United States for the western district of North Carolina:

The joint and several answers of S. M. Rice and R. L. Coleman, two of the defendants, to the bill of complaint of Vincent R. Tommey and the Atlanta Rolling Mills Company against them, and the Spartanburg and Asheville Railroad Company, William H. Inman, John B. Clemland, Eli Fry, and J. A. Deal, E. Clayton, and John Garrison.

These defendants, now and at all times hereafter reserving all manner of benefit and advantage to themselves of exception to the many errors and insufficiencies in said bill contained, as answer thereto, or unto so much or such parts thereof as these defendants are advised is material for them to make answer unto, the- answer and sa*le:* That they admit that the Spartanburg and Asheville Railroad Company was a corporation under the laws of South Carolina under an act of the Legislature of said State of February 20th, 1873, with power to construct, have and operate a railroad, and other rights and franchises conferred by said act and amendatory acts referred to in complainants' bill.

That the Greenville and French Broad Railroad Company was a railroad corporation created by an act of the Legislature of
190 North Carolina of February the 13th, 1855, with power to construct and have a railroad and with the rights and franchises conferred by said act and acts amendatory thereof, referred to in complainants' bill. But these defendants deny that the said two railroad companies on the 31st day of July, 1874, or at any other time, duly consolidated and united into one corporation under the name and style of the Spartanburg and Asheville Railroad Company, or in any other name or manner, or that they ever became one body corporate under said name and style, invested with all the property, rights, powers, privileges, franchises, and immunities which had been possessed by the said companies separately. These defendants say that the said companies (The S. & A. R. R. Company of S. C. and the G. & F. B. R. R. Co. aforesaid) had no authority, either by their said charters or the acts amendatory thereof, respectively, or by the laws of the said respective States, to make the said alleged consolidation, or to consolidate or unite in any manner. That the said pretended consolidation alleged in the bill was never, as these defendants are informed and believe, submitted to or ratified or agreed on by the stockholders of said two companies, respectively, and was never made, done, ratified, or agreed upon by said companies, or either of them.

These defendants admit that there is a paper writing purporting to be a deed of trust and mortgage, and to be executed by D. R. Duncan, president, Wm. H. Inman, John B. Cleveland, Thos.
191 B. Jeters, and John L. Wiley, on the part of the Spartanburg and Asheville Railroad Company, being the writing referred to and described in the bill as a deed of trust and mortgage of the rights, property, and franchises of the said company to secure the holders of its bonds. But they deny that the said writing is the act or deed of said company, or that it is a mortgage or deed of trust for said rights of property or franchises, or that it is or constitutes any lien thereon, or was ever authorized by said company.

These defendants admit that there were issues of what purported to be the bonds of said company of the denominations and descriptions and to the amount alleged in complainant's bill. But they deny that the said pretended bonds are or were bonds of said company, or that they or the issue thereof were authorized or obligatory on said company.

Defendants, further answering, say that the said Spartanburg and Asheville Railroad Compony, even if it had so attempted, had not, at the —— of said pretended mortgage and execution and issue of said bonds, and has never had, authority to make such mortgage or bonds, or issuance thereof, or such contract as in said pretended instrument.

Defendants, further answering, say that of the $670,000, the amount of said pretended mortgage and mortgage-bond issue, there was an issue of said pretended bonds, purporting to bind said S. & A. R. R. Co., its property and franchises, to the amount of
192 $633,000, which, if prudently, properly, and faithfully sold

and disposed of, would have produced a sufficient amount to have speedily finished the road to Asheville, N. C., and enabled the said company to pay promptly, when due, the interest on said bonds, and prevented any forfeiture or right or claim of foreclosure, or sale of the property, or franchises of said company on account of the sale, or any other liabilities; but that, instead of such prudent, proper, and faithful action, D. R. Duncan, the pres. of said company, and a trustee thereof, its property and franchises for said company, its stockholders and creditors, disposed of said bonds without having effectively or at all, advertised or taken other prudent and reasonable means to sell the same to advantage, and at far less than their nominal or real value; that, as these defendants are informed and believe, he hypothecated to defendant, Wm. H. Inman, one of the trustees in said pretended mortgage deed, some $213,000 of said bonds as collateral security for a loan of $66,000 to the said S. & A. R. R. Co.; to the Spartanburg, Union & Columbia Railroad Company, some $224,000 of said bonds, to secure a debt of not more than fifty per cent. of that amount; to the plaintiff, Atlanta Rolling Mills Company, some $109,000, to secure the claim sued on of $55,000, and interest, as stated in the bill, which said parties still hold; and

193 the remainder of said $633,000 were disposed of to other parties at not more than about fifty per cent. thereof; that said transactions constituted a blind, rash, inconsiderate and reckless waste and mismanagement of the assets and resources of said company, not realizing as capable of realizing sufficient to complete its said road to a point or extent to enable it to earn a net income or pay interest on its said bonds, but rendering morally certain the nonpayment of said interest and the foreclosure of said mortgage if the same can be sustained; and that the plaintiffs, at the time they had their various said transactions with said company or persons assuming to act for it, referred to in the bill, knew of said waste and mismanagement, and of the said situation, encumbrances, and embarrassments of the said company, hereinbefore and hereinafter set forth.

Defendants, further answering, say that before and at the time of and ever since said transactions there existed, and still exists, a fraudulent combination between and among the said parties thereto and others, to wit, said Inman, Alfred Austell, R. Y. McAden, the said Spartanburg, Union and Columbia Railroad Company, the plaintiffs, and others, to waste and procure to be wasted the said bonds and other property and assets of the said S. & A. R. R. Co., and thereby compel it fail paying the interest of said bonds, and to bring about a foreclosure and sale of the said property and franchises of

194 said company for the benefit of said parties, and to enable them to pay the same at a grossly inadequate price, and that for these purposes they made use of and combined with the said D. R. Duncan to do the acts aforesaid, and otherwise to promote and assist to carry into effect the said objects and designs of the said parties. That the said waste and mismanagement were notorious in the section of country where the plaintiffs resided and did business at the time of said transactions, and that they were fully aware

thereof; that said Inman was then a director of the S. & A. R. R. Co. and of the said S., U. & C. R. R. Co., and largely interested as stockholder and director in the plaintiff company; that the said S., U. & C. R. R. Co. was then and is a stockholder in said S., A. R. R. Co.; that R. Y. McAden then was and is president and director of said S., U. & C. R. R. Co., and one of the principal stockholders and owners thereof; that said Alfred Austell then was a director in said plaintiff company, largely interested and actively advising and assisting in its management, and also a director in said S., U. & C. R. R. Co., and a stockholder in the S. & A. R. R. Co.; and the plaintiffs, through said relationships and otherwise, have been throughout cognizant and participant in all said matters and transactions, and through their own wrong have fraudulently caused and assisted to cause the defaults of which they complain, and all the said transactions were in pursuance of said fraudulent combination, and for the purpose of carrying into effect the said fraudulent intents and objects.

195 These defendants, further answering, say that the said S. & A. R. R. Co. is and was justly indebted to them before the beginning of this suit in the sum of $22,935.23, & interest from 1st May, 1878, *dollars* for work, labor, and materials on its said road, and on that portion thereof of which the land belongs to these defendants; that they have brought suit in the State court to enforce their said claim, and taken steps under the State laws therefor, and submit that this court cannot and will not offer to interfere with said proceedings.

These defendants are the owners of said land on which a portion of said road is constructed, as aforesaid, and as mentioned in complainants' bill, and claim the benefit of their said title, and the plaintiffs, or any claiming to represent said road, are not entitled thereto, or to the right of way, until their said debt is paid, and these defendants submit to this honorable court that these plaintiffs have no right to bring this suit, and are not entitled to any relief in the premises; and these defendants hope they shall have the same benefit of this defense as if they had demurred to the complainant's bill, and they deny all unlawful combination, &c., and pray to be hence dismissed with their reasonable cost & charges in this behalf most wrongfully sustained.

M. E. CARTER,
D. COLEMAN,
Sol's for Def'ts, S. M. Rice & R. L. Coleman, partners under the name & style [of] Rice & Coleman.

196 & 197 *Amended Answer.*

The defendants, S. M. Rice & R. L. Coleman, partners under the name & style of Rice & Coleman, amending their answer, by leave of court, for amendment thereto, further say:

That the defendant, The Spartanburg & Asheville Railroad Company, prior to and at the time of the execution of said alleged deed of mortgage mentioned in the pleadings, if indeed the same is yet

perfected by valid registration, were indebted to these defendants in the sum of twenty-two thousand nine hundred & thirty-five $\frac{23}{100}$ dollars, with interest for work done on the Greene river division, Saluda section of said defendant corporation's line of railroad, the said work extending from said Greene river to Butt Mountain Gap, & consisting of grading, trestle work, preparing the road-bed, furnishing & laying cross-ties, and other work in the construction of said railroad; that said work was commenced about June 1st, 1876, and continuously prosecuted till the 1st May, 1878, and the said sum of twenty-two thousand nine hundred and thirty-five $\frac{23}{100}$ dollars is still due these defendants therefor. And these defendants insist that they have a first lien on the property, rights, & franchises of the said The Spartanburg & Asheville Railroad Company, including said road, rolling-stock, &c., for the security & payment of said lien.

The said defendants, S. M. Rice & R. L. Coleman, partners under the name & style of Rice & Coleman, further answering, say
198 that before the execution of said alleged mortgage deed & its valid registration, if such there be, they duly filed notice of lien under the mechanics & laborers' lien law, against said S. & A. Railroad Company upon their property & franchises as set forth in the notice of lien, a copy of which, marked —, is herewith filed, and these defendants sued, in accordance with said notice, and duly obtained judgment against the defendant, The Spartanburg & Asheville Railroad Company, in the superior court of Henderson county, in this State, for said sum of twenty-two thousand nine hundred & thirty-five $\frac{23}{100}$ dollars, with interest and a judgment also; that said defendants, Rice & Coleman, are entitled to a lien on the property, rights, and franchises of said the Spartanburg & Asheville Railroad Company, and that they have proper process of execution to enforce the said lien & obtain said debt.

The defendants further answering say that they are the owners of a large part of the land over which said railroad passes from Greene river to Butt Mountain Gap, being the lands in their possession known as the Nathan McMinn tract, the Swain tract, and the Speculation tract, the last named having been purchased from O. B. McLure, the title to which said lands plaintiffs admitted in evidence taken at Hendersonville before Commissioner Jones, is in the defendants, Rice & Coleman. These defendants further allege that the said the Spartanburg & Asheville Railroad Company has
199 never had said lands assessed for condemnation, nor taken any steps thereto, nor have they purchased the land or right of way over said land on which their land is situated, nor contracted therefor; and these defendants refused to let the said defendant corporation lay the iron upon that part of the line over their land or run the cars thereon, and they persisted in their refusal, & the iron was not laid over any part of said land until R. Y. McAden, one of the directors, assured these defendants, and agreed with them for the road, that the iron should be laid without prejudice to the road or these defendants, and only in consequence of this agreement did these defendants consent that the iron should be placed on their land & the cars run over the same.

These defendants further allege and insist that the plaintiffs had no right to sue when their bill was filed, for that these defendants allege that only the trustees in the said alleged mortgage deed have the right to ask a foreclosure & sale, and they must first have been applied to by the stockholders, which it is not alleged was done, and these defendants pray that they may have the same benefit of this objection as if it had been raised on demurrer.

These defendants further allege that no demand was ever made by the plaintiffs or anybody else for interest due on the mortgage bonds before this suit was brought, and these defendants pray that they may have the same benefit of this objection as if raised
200 on demurrer.

Wherefore these defendants insist that this honorable court will not grant a decree for foreclosure and sale, as prayed for by plaintiffs; but if such decree shall be made, these defendants pray that this court will declare that they have a first lien upon the property and franchises of said railroad company & proceeds of sale of the same if made; that they are entitled to the statutory liens aforesaid, and that this honorable court will adjudicate & decree to them their rights to which they are entitled upon the pleadings & the evidence in this cause.

D. COLEMAN &
M. E. CARTER,
Sol's for said Defendants.

And afterwards, to wit, March 1st, 1879, the plaintiffs file their replication in our said court, which said replication is in the words and figures as follows, to wit:

201 Circuit Court of the United States, for Western District of North Carolina.

VINCENT R. TOMMEY and ATLANTA ROLLING MILL COMPANY, Plaintiffs,

vs.

THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY, E. CLAYTON, S. M. Rice, & R. L. Coleman, partners under the name & style of Rice & Coleman; J. E. Fry & J. A. Deal, partners under the name & style of Fry & Deal; John Garrison, board of commissioners of Buncombe county, Defendants.

These repliants, saving and reserving to themselves all and all manner of advantage of exceptions to the manifold insufficiencies of the said answers of the several and each of the said defendants for replication thereto say, that they will aver and prove their said bill to be true, certain and sufficient in law to be answered unto; and that the said several answers of the said defendants are un-
202 certain, insufficient, and untrue to be replied unto by these repliants, without this, that any other matter or thing whatever in the said answers contained, or either of them, material of effectual in law to be replied unto, confessed, and avoided, traversed or denied, is true. All which matters and things, these repliants are

and will be ready to aver and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

THOMPSON,
BYNUM,
Sol's for Pl'ffs.

Feb'y 27, 1879.

203 And at another term of our said court, begun, opened, and held in the city of Charlotte, in and for the western district of North Carolina, on the second Monday in June, 1879, it being the 9th day of said month of June.

The Honorable Robert P. Dick, judge of the United States district court being present, presiding and holding said court on the 11th day of said month of June, 1878, on motion of counsel for complainants an order was passed for appointment of master in chancery *pro hoc vice*, which said order is in words and figures following, to wit:

204 *Bill.*

In Circuit Court of the United States for the Western District of North Carolina, at Charlotte.

V. R. TOMMEY AND ATLANTA ROLLING MILL CO.

vs.

THE SPARTANBURG AND ASHEVILLE R. R. CO. *et al.*

In open court. June Term, 1879.

On motion of counsel for complainants it is ordered that the above stated cause be referred to —— ——— as master in chancery *pro hoc vice*, who is directed and required to inquire into and report as to the following matters, to wit:

1st. As to the property held, owned, and enjoyed by the Spartanburg and Asheville Railroad Company at the time said bill was filed, and the right, title, and interest of said company therein or thereto.

205 2nd. As to the amount, nature, character, and priority of liens created by said company, or existing by operation of law upon the property of said company, designating the particular property upon which the liens operate.

3rd. As to the number, amount, and character of the bonds issued by the Spartanburg and Asheville Railroad Company, to whom they were delivered, and for what purpose delivered, by whom they are held and how held, and the rights of the holders thereof.

4th. As to the state of the account between said railroad company and each creditor, making an exhibit thereof and designating the rank of each claim, how it is secured, if secured at all; what lien it has, if any, and on what property; and how and out of what property it shall be paid, or what adjustment shall be made thereof.

5th. As to state of account with the receiver of said road,
206 showing the receipts and expenditures of said receiver, the liabilities incurred by him, and the rights of the parties with whom he has contracted or to whom he is indebted, and whether or not any portion of his account should be disallowed.

6th. As to the present condition of the property of said R. R. company, what lien exist upon it, and the rank and priority of such liens; and as to all issues legitimately made by the pleadings, the determination of which is essential in order that there may be a full and final decree at the December term next of this court.

It is further ordered that the report herein required shall be filed in the clerk's office of this court on or before the first day of October next, together with the evidence on which such report is
207 founded. The special master will be appointed at Greensboro' on the first Monday in July next.

ROBERT P. DICK, *Judge.*

And afterwards, to wit, July 17, 1879, James H. Merriman, Esq'r, files in our said court a motion to allow R. W. Allen, A. Cannon & J. P. Johnston, partners under the name & style of Allen, Cannon & Co., —— Perrin, and —— Gramlin, to become parties defendant, and that they have leave to answer the bill of complaint herein, which said motion is in words and figures as follows, to wit:

208 *Motion.*

Circuit Court of the United States for the Western Dist. of N. C.

M. V. TOMMEY & THE ATLANTA ROLLING MILL COMPANY
v.
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY and others.

That R. W. Allen, A. Cannon, & J. P. Johnston, partners under the name & style of Allen, Cannon & Co., —— Perrin, —— Gramling, have leave to become parties defendant in this suit, and to answer the bill of complaint herein, & file cross-bill.

J. H. MERRIMON, *Counsel.*

And on said day, to wit, July 17, 1879, M. E. Carter, Esq'r, files a motion in our said court to allow Thad-eus Coleman to become party defendant, &c., which said motion is in the words and figures as follows, to wit:

209 *Motion.*

Circuit Court of the United States for the Western Dist. of N. C.

E. V. TOMMY & THE ATLANTA ROLLING-MILL COMPANY
vs.
THE SPARTANBURG & ASHEVILLE RAILROAD COMPANY and others.

That Thaddeus Coleman have leave to become a party defendant in this suit, and to answer the bill of complaint herein and file cross-bill.

M. E. CARTER, *Counsel.*

And on said day, to wit, July 17th, 1879, M. E. Carter, Esqr., files in our said court a motion in behalf of S. M. Rice & R. L. Coleman, partners under the name and style of Rice and Coleman, in the words and figures as follows, to wit:

210 Circuit Court of the United States, Western Dist. of North Carolina.

M. V. Tommey and The Atlanta Rolling-Mill Comapny
v.
The Spartanburg & Asheville Railroad Company & others.

The defendants, S. M. Rice & R. L. Coleman, partners under the name and style of Rice & Coleman, move the court—

1st. For leave to amend their answer.

2nd. For leave to file cross-bill.

3rd. That John A. Gilmer or John S. Henderson or Kerr Craige be appointed master, under decree at Dec. term, 1878, & that the master report on the 1st day of November instead of 1st October, 1878.

M. E. CARTER, *Atto.*

And on said 17th day of July, 1879, James H. Merriman, Esqr., in behalf of the commissioners of Buncombe, Ephraim Clayton, files a motion in our said court in the words and figures as follows, to wit:

211 Circuit Court of the United States, Western Dist. of North Carolina.

M. V. Tommey and The Atlanta Rolling-Mill Company
vs.
The Spartanburg & Asheville Railroad Company and others

The defendants, The Com'rs of Buncombe County, Ephraim Clayton, J. E. Fry, and J. A. Deal, partners under the name & style of Fry and Deal, move the court—

I. That the order referring the matters in controversy to a master in chancery, made at Dec. term, 1878, at Charlotte, be so modified as to fix the 1st day of November, instead of the 1st day of Oct., on which the master shall file his report.

II. For leave to file cross-bill.

JAS. H. MERRIMON,
Counsel for Def'ts.

Monday, July 7th, 1879.

And afterwards, to wit, on the 15th day of July, 1879, an order is granted and passed appointing A. Burwell, Esqr., special master in chancery to execute interlocutory order made at Charlotte, at June term, 1879; which said order is in words and figures as follows, viz:

212 OFFICE OF U. S. DISTRICT JUDGE,
GREENSBORO, *July* 15, 1879.

V. R. TOMMY *et al. vs.* THE S. AND A. R. R. CO. *et al.*

Upon the motion filed on rule day, July 7th, 1879, the following directions for interlocutory order is given, to be proposed and submitted by counsel:

It is ordered that A. Burwell, Esq., be appointed special master in chancery to execute interlocutory order made in the cause at Charlotte, at June term, 1879.

The motion to extend the time for the filing of the report of the master to 1st day November next is granted, provided the counsel of record making motion file their consent in writing with the master that the hearing of cause shall not be delayed by such extension of time for their benefit. And any exceptions that may be filed
213 shall be heard as if the report of master had been filed as directed in order at Charlotte.

Leave is granted the parties asking to amend answers, and to persons seeking to become parties defendant and file answers, with the express understanding that such leave granted shall in no way delay the hearing of this cause.

The motions for leave to file cross-bills are continued without prejudice, to be heard hereafter when deemed necessary or proper by the court.

ROBERT P. DICK, *Judge.*

214 And on another day, to wit, the 18th day of November, 1879, E. Clayton files an amended answer in said court; which said answer is in words and figures as follows, to wit:

215 In the Circuit Court of the United States for the Western Dist. of North Carolina.

The amended answer of E. Clayton, one of the defendants, to the bill of complaint of V. R. Tommey and Atlanta Rolling Mill Company, complainants:

The defendant, answering, says that the said The Spartanburg and Ashville Railroad Company, prior to the time of the alleged execution of the mortgage mentioned in the bill of complaint, made contracts with this defendant to grade portions of said company's road, and that the defendant, under said contract, did said grading prior to the registration of said mortgage, and that the said company, prior to the registration of said mortgage, was indebted to this defendant under said contracts, in the sum of the amount mentioned in his former answer, and more; and defendant further says that he is informed and believes that his said indebtedness against said company is a first lien upon the property, rights, and franchises of said corporation, and that he is entitled to have his said debt
216 paid or secured by said corporation before said alleged mortgage shall be registered; the defendant further says that his said debt has not been paid or secured by said corporation; the de-

fendant denies that he voted — a stockholder of said company, or otherwise, for the making by said company of said mortgage, or issuing said alleged mortgage bonds.

This defendant therefore prays the court that his said indebtedness may be declared a first lien upon the property, rights, and franchises of said The Spartanburg and Ashville Railroad Company, and for such other relief as he may be entitled under the circumstances of his case.

J. H. MERRIMON.
Sol. for E. Clayton.

E. Clayton, being duly sworn, says that the facts stated in the foregoing-amended answer are true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believe said amended answer to be true.

E. CLAYTON.

Subscribed and sworn to before me, this 15th day of Nov., 1879.
ROB'T P. DICK, *Judge.*

217 And on another day, to wit, the 2nd day of December, 1879, the report of A. Burwell, special master, is filed in said court. Said report is in the words and figures following, to wit:

218 *Report of A. Burwell, Special Master.*

Circuit Court of the United States, Western District of North Carolina.

V. R. TOMMEY *et al.*
against
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY *et al.*

In pursuance of the decretal orders made and entered in this cause, by which it was referred to me, as master *pro hoc vico*, to report upon the matters mentioned in said orders, I do respectfully report that I have proceeded to investigate the matters so referred to me, and that, having notified all the parties by means of notice mailed to each of them, and by advertisement for five weeks in the Carolina Spartan, a newspaper published in Spartanburg, S. C., and in the Western Courier, a newspaper published in Hendersonville, N. C., that I would begin the hearing of said matters on October 1st, 1879, at Charlotte, in said district, at that time and place, there
219 were present the following parties: Wm. H. Inman, by J. H. Rion, his attorney; W. P. Bynam, attorney for V. R. Tommey and the Atlanta R. M. Co., and for the S., U. & C. R. R. Co.; D. R. Duncan, pres'd't for the S. & A. R. R. Co.; J. H. Merriman, attorney for E. Clayton; J. E. Fry & J. A. Deal, partners under the name & Style of Fry & Deal, and Commissioners of Buncombs Co.; M. E. Carter & Coleman, attorneys for S. M. Rice & R. L. Coleman, partners under the name and style of Rice and Coleman, and for Thad. Coleman.

The hearing was proceeded with till Oct. 4th, when it was agreed by the parties, (all being then present, except Jas. H. Rion, Esq.,) that the evidence of any witnesses that any party might wish to examine could be taken at Hendersonville, N. C., on Oct. 14th, before W. W. Jones, Esq., and that the testimony so taken should be read in this cause. I send herewith all the evidence taken in this matter, and do find and report as follows:

Incorporation of S. & A. R. R. Co.

220 The Spartanburg and Asheville R. R. Co. was originally incorporated by an act of the Legislature of South Carolina, approved Feb. 20th, 1873, and was authorized "to survey, lay out, and construct a railroad from the town of Spartanburg * * * to the North Carolina line, and the same to equip, use, and enjoy, with all the rights, privileges, and immunities granted to the Greenville & Columbia R. R. Co., under the act incorporating the same."

G. & F. B. R. R. Co.

The Greenville and French Broad R. R. Co. was incorporated by act of the Legistature of North Carolina, ratified Feb. 13th, 1855.

The above-named companies were corporations existing under the laws of their respective States at the time of the consolidation hereinafter mentioned, with all the powers and rights conferred upon them by the said act of incorporation and the general law of their respective States.

Consolidation of the two Co's.

221 On the 31st of July, 1874, the above-named corporations were consolidated under the name of The Spartanburg & Ashville Railroad Company, after proper proceedings had by the stockholders and directors of each company, and according to the agreement entered into between them, a copy of which is herewith sent. This consolidation of the two companies was recognized by the Legislature of North Carolina in an act passed Dec. 9th, 1874, entitled "An act to amend the charter of the Greenville & French Broad R. R. Co.," and in said act the corporation formed by such consolidation was recognized as being vested with all the rights and powers of the Greenville and French Broad R. R. Co. The board of commissioners of Buncombe county, and all other parties to this suit, and all the creditors who have filed their claims before the referee, recognized the action of the said two companies as affecting a legal consolidation of the two corporations, and contracted with the defendant, the Spartanburg & Asheville R. R. Co., as such corporation.

The Two Company's Consolidated.

222 I find and report that, as to all the parties now before the court, the defendant, the Spartanburg and Asheville R. R. Co., is a corporation under the laws of the two States of North

and South Carolina, and had all the rights, privileges, and powers of such a corporation under the original act of incorporatioa, the amendments thereto, and the general laws of each State.

Mortgage.

This corporation, endeavoring to build the road from Spartanburg, S. C., to Asheville, N. C., had, in the year 1876, about exhausted all its cash assets, and was indebted to a considerable extent to its contractors and others. At this crisis in the affairs of the company, the stockholders met at Hendersonville Aug. 9th, 1876, and adopted the resolution in regard to placing a mortgage on the road, a copy of which is filed.

Action of Directors.

On the same day the board of directors met and adopted the resolutions, a copy of which is also filed, and at the next meeting
223 of the board of directors, Aug. 8th, 1877, the following proceedings were had, as appears from minutes of the board:

Ratification of Action of President.

The following resolution was unanimously adopted:

"Resolved, That the action of the president and board of directors under the resolutions adopted by the stockholders at their annual meeting held Aug. 9th, 1876, authorizing the issue of first mortgage bonds, is approved, and is hereby ratified."

Provisions of Mortgage.

I further find that at the meeting of the board of directors held Aug. 9th, 1876, the president of the company explained fully to the board the provisions of the mortgage as afterwards executed by him for the company, and that the mortgage, a copy of which is appended to the bill, was in all respects such a deed as he was instructed to make by the board.

Execution of Mortgage.

I find that the president of the company, on or about Oct. 1st, 1876, affixed to said deed the seal of the company, and signed it as follows: "The Spartanburg & Asheville Railroad Company, by
224 D. R. Duncan, president," and that W. K. Blake also signed it as the secretary and treasurer of the company, and that W. H. Inman and Jno. B. Cleveland, as trustees, also signed and affixed their seals.

At some time after this and prior to Sept. 28th, 1878, T. B. Jeter and Jno. S. Wiley, two of the directors of the company, also affixed their hands and seals to said mortgage.

I find and report that the said mortgage was duly executed on Oct. 1st, 1876, as above stated.

Registration of Mortgage.

This mortgage was duly registered in Spartanburg county, S. C., on June 20th, 1877.

I herewith send copies of all the certificates of probate and registration as found by me on the original mortgage, which was in evidence, and I find that the certificate of registration in Polk county, now dated "Sept. 30th, 1878," and marked on the copy "A," was made and dated originally on the "3rd day of December, 1877," on which last-named day the mortgage was written out on the
225 register's books of said county; that on Sept. 30th, 1878, said mortgage was again presented to the register of Polk county for registration, when he erased "Dec., 1877," and inserted "September 30th, 1878," in certificate "A," and also made certificate "B," but did not transcribe the mortgage again upon the books. He also changed the date on his books to correspond with his change of the certificate.

From these certificates and facts above stated I find that this mortgage or deed in trust was duly registered: In Buncombe county, on the 25th day of Nov., 1878; in Henderson county, on 23rd day of Nov., 1878; in Polk county, the 22nd day of Nov., 1878.

Bonds Sold to the S. C. R. R. Co. Coupons not Paid.

I find that of the bonds provided for in this mortgage ($670,000), the amount of $642,000 has passed out of the possession of the company in the manner and for the consideration hereinafter set
226 out, which bonds were all executed according to the terms of the deed. Of them, I find that $4,500 were sold by the company to the South Carolina R. R. Co. at par, that company taking them in payment of freight on iron rails, and that said company is the absolute owner of said bonds, and has been since the — day of —— 1877; and that in the month of July, 1877, the coupons on said bonds being due, the South Carolina R. R. Co. demanded the payment of such coupons; payment was refused for want of funds, but in Oct., 1877, in a settlement between the two companies of the ticket account, these coupons were used by the South Carolina R. R. Co. as cash, and taken up by the Spartanburg and Asheville R. R. Co. in that way; that the Spartanburg & Asheville R. R. Co. has not paid the coupons maturing on those bonds Jan. 1st, 1878, or since; has had no funds out of which it could pay coupons as they matured, and that it was generally known to all the parties
227 holding the mortgage bonds of the company, as collateral or otherwise, that the Spartanburg and Asheville R. R. Co., the defendant, was not paying, nor was it able to pay, its coupons as they matured.

Collaterals.

All the mortgage bonds proved before me (except the $4,500 above and $7,400 hereafter mentioned) are held and claimed by the parties presenting them only as collateral security for the debts due then from the company. I herewith submit a detailed list of the debts

claimed to be secured, showing the principal and interest of each debt, and the amount of bonds held by each creditor as collateral thereto.

As to all these debts due from the company, I find and report that the several sums are justly due, and the company either received the cash, where the debt is for money borrowed, or purchased articles at a fair price; and that all the cash so borrowed was properly expended on the work.

228 *Hypothecation of Bonds.*

I find from the evidence brought before me that the hypothecation of these bonds was made by the president, Maj. D. R. Duncan, with the knowledge and consent of the board of directors of the company, and that, under the law and charter of the company, he had authority so to hypothecate these bonds, and that all the parties whose names appear on the said list have a valid claim to said bonds as asserted by them; and I also find, that in all these transactions the president of the company consulted the best interest of the company, and obtained for it as favorable terms as were possible, considering the financial distress of the country at that time, and the great discredit that had been cast on all railroad enterprises; and that, being directed to car-y on the work of constructing the road, with no funds at his disposal, except such as might come to his hands
229 from a sale or hypothecation of the mortgaged bonds, and having under these circumstances obtained money for the use of the company, all of which was duly reported by him, and by the secretary and treasurer to the board of directors, and to the stockholders, the creditors holding said bonds are entitled to hold the same as security for their respective debts.

Amount of Bonds Held as Collaterals.

I find that the principal of the bonds so held as collateral is $615,000, on which the interest to July 1, 1879, is $84,449, and I herewith send a detailed list of the debts so secured, of the amount of bonds held by each creditor as collateral for his debt, and of the amount of the past due interest on such collaterals which should, in my opinion, be allowed to each creditor, interest being calculated to Nov. 1st, 1879.

W. H. Inman's Debt. County Bonds.

I find and report that W. H. Inman, one of the defendants,
230 was a director of the Spartanburg & Asheville R. R. Co. at the time of the transactions between him and the company hereinafter set forth. He is also one of the trustees named in the mortgage. In the year 1876 the company was indebted to him in the sum of $126,245.54, and he held, as collateral to secure the payment of said sum, bonds of the counties of Union and Spartanburg, So. Ca., to the amount of $210,900; that the company being unable to pay said debt, and Mr. Inman, demanding his money, the president made a settlement with him, and in the payment of his debt trans-

ferred to him the said county bonds at the price of fifty cents on the dollar, and that said bonds were then worth only that price in the market; that they are now worth 85 cts., and the counties have paid all the matured coupons on said bonds; that said bonds bore 7 per cent. interest. There was no evidence introduced before me
231 showing that the president of the company had any direct authority so to dispose of the above bonds to Mr. Inman. I refer to the testimony of Maj. Duncan, the president, as giving a full statement of the facts of this transaction.

W. H. Inman's Debt. No. 1, 2.

It will be seen from the schedule of debts proved that the company is indebted to W. H. Inman in the sum of $61,983.50, principal money, the consideration of which debts also there appears. He, as the assignee of Wofford College, holds a note of the company for $2,000, and as collateral thereto, bonds to the amount of $4,000, and also $1,610 in coupons. I find that those coupons were past due and detached when they passed from the company, and I find that they do not constitute any part of the mortgage debt of the company, and I have treated them as worthless in his hands. For the claim of $40,000 and interest he holds $100,000 of bonds.

No. 3.

232 As to his claim, No. 3, for $19,893.50, I find that he advanced money for the company to that amount, and bonds were deposited with him to secure such advancements, he having agreed to advance to the extent of 50 per cent. of the bonds put in his possession; that when he had advanced the amount above stated he refused to make any further advances. Bonds to the amount of one hundred thousand dollars had been put in his possession for that purpose, all of which he now presents as collaterals for his said claims. I find and report that he is entitled to prove said bonds only to double the amount of his said debt, to wit, $39,787, and that he holds the remainder of said bonds, to wit, $60,213, for the company.

S., U. & C. R. R. Claim.

I find that the Spartanburg and Asheville R. R. Co. is indebted to the Spartanburg, Union & Col. R. R. Co. in the sum of $112,341.82, principal money, this estimate including a debt due John
233 H. Inman of $70,000, for which the S. U. & C. R. R. Co. is surity. Of this amount $9,525.36 is a balance due for hire of cars, etc.; $33,588.46 is for cash advanced, and the balance is the "Jno. H. Inman debt" above mentioned of $70,000. For this indebtedness and liability the Spartanburg, Union and Columbia R. R. Co. holds mortgage bonds to the amount of $224,000.

S., U. & C. R. R. Claim.

The Spartanburg and Asheville R. R. connects at Spartanburg with the Spartanburg, Union & Columbia R. R., and this last road

is the property of R. Y. McAden, W. H. Inman, Alfred Austell, and others, who bought it at the sale of the Spartanburg & Union R. R. W. H. Inman was a director in both of these companies, as were also D. R Duncan and G. Cannon. Contracts were made between the two companies for the hire of rolling stock, the Spartanburg & Asheville R. R. Co. having none, and for the borrowing of money, and the mortgage bonds were deposited to secure the payment of this indebtedness.

234 Afterwards, in the year 1878, the Spartanburg & Asheville R. R. Co. being out of money, and a stoppage of the work being threatened, Jno. H. Inman agreed to loan the Spartanburg & Asheville R. R. Co. $70,000 on notes endorsed by the Spartanburg, Union & Columbia R. R. Co. The notes were so executed: The money went into the Spartanburg & Asheville R. R. Co., and was expended on the work, it being loaned upon the express condition that it should be used only in extending the road beyond its then terminus. I find that the debt above stated is justly due to the Spartanburg, Union & Columbia R. R. Co., and that no fraud has been practiced upon or undue advantage taken of the Spartanburg & Asheville R. R. Co. by the officers of the Spartanburg, Union & Columbia R. R. Co.

Atlanta Rolling Mill Co.'s Debt.

I find that the S. & A. R. R. Co. is justly indebted to the Atlanta Rolling Mills Co. in the sum of $56,680.19 for iron rails, &c.,
235 bought of it by the railroad company through its officers, duly authorized, and at fair prices. For collateral security the rolling mills Co. now holds $105,000 of mortgage bonds. I find that no fraud was practiced by the rolling mills Co. or its officers upon the S. & [A.] R. R. or its officers.

The rolling mills Co. originally held $110,000 of the mortgage bonds, but $5,000 of these bonds were sold to R. R. Tommey in the manner hereinafter stated.

Statement of Debts Secured by Collatterals.

As to all the other debts secured by mortgage bonds as collateral and placed upon the list of such debts, I find and report that they are all justly due, and that the several creditors have a valid right to the said collaterals. I therefore report that:

The principal of the debt so secured is	$272,419 06
And that interest to Nov. 1st, 1879, is	52,524 34
Making a total of	$324,943 40
And that the collaterals held are	$615,000 00
On which the interest to July 1st, 1879, is	85,449 00
Making the total collaterals	$700,449 00

Sale of Bonds to E. Clayton.

In addition to the mortgage bonds sold to the South Caro-
236 lina R. R. Co., as above stated, I find that the Spartanburg & Asheville R. R. Co. sold to E. Clayton $2,400 of said bonds in the year 1877, and he still holds the same. These bonds were transferred to him in part payment of a debt due from the company, and the coupons thereon have not been demanded or paid.

Sale of Bonds to V. R. Tommey.

I find that V. R. Tommey was the president of the Atlanta Rolling Mills Co., and also of the Georgia Banking and Trust Co.; that the Spartanburg & Asheville R. R. Co., by its president, had executed the note for $2,500, dated the 1st day of September, 1877, a copy of which will be found in the exhibits; that the note had been disco-nt*inue*d by the Rolling Mills Co. at the said bank, and not being paid at maturity the said bank and the Rolling Mills Co. passed the resolutions in regard to the sale of the collaterals, as shown in the evidence; that thereupon V. R. Tommey became the
237 purchaser of said bonds at the price of 24 per cent., and is now and was, prior to the filing of the bill, the absolute owner thereof. I find no evidence of any collusion between said Rolling Mills Co. or V. R Tommey and the Spartanburg & Asheville R. R. Co. in regard to the sale and purchase of these bonds. The Spartanburg & Asheville R. R. Co. admits his ownership of the bonds. I find that the coupons on said bonds are unpaid from January, 1878, and that payment of them was not demanded prior to the beginning of this suit.

I therefore report that $11,900 of the mortgage bonds are held and owned absolutely by the parties, to wit:

Bonds held by Owners.

South Carolina Railroad Company	$4,500 00
E. Clayton	2,400 00
V. R. Tommey	5,000 00
Total	$11,900 00

On which interest is due from July 1st, 1877.

Bonds not Proven.

It was in evidence before me that the following-named
238 creditors, who have proved their debts, hold mortgage bonds, delivered to them as collateral by the president:

T. Coleman	$8,000 00
G. C. Perrin	2,500 00
J. E. Fry & J. A. Deal, partners under the name & style of Fry & Deal	500 00
R. W. Allen, A. Cannon, & J. P. Johnston, partners under the name & style of Allen, Cannon & Co.	4,000 00

But these creditors have not proved said bonds, and assert liens on the property of the company other than the lien of the mortgage.

General Statement of Bonds Issued.

From the above statement it appears that of these bonds—

There are held by owners	$11,900 00
There are held as collaterals presented	615,000 00
Held as collaterals not presented	15,000 00
Not issued by company	28,100 00
Total, as provided for in the mortgage	$670,000 00
From the bonds proved as collateral	615,000 00
Is to be deducted, not allowed	60,213 00
Collaterals allowed	$554,787 00

"Mechanics' Lien."

Three creditors who have proved their debts in this proceeding, to wit, J. E. Fry & J. A. Deal, partners under the name & style of Fry & Deal, John Garrison, and T. G. Williamson, assert that they have a "mechanic's lien" on the property of the company in
239 Polk county under the statute of the State.

Fry & Deal.

As to the claim of J. E. Fry & J. A. Deal, partners under the name and style of Fry & Deal, I find—

That J. E. Fry & J. A. Deal, partners, under the name and style of Fry & Deal, entered into a contract with the Spartanburg & Asheville R. R. Co. to build trestles numbers 9, 10, 11, and 12, on the line of said road, in Polk county; that said contract was made on the 2nd day of June, 1877, and the work was completed on the 17th day of June, 1878; that Fry was a mechanic and worked himself on the trestles and superintended the labor of his employees; that Deal was not a mechanic; that Fry & Deal furnished the material out of which the trestles were built; that at the time this work was done J. E. Fry & J. A. Deal, partners under the name & style of Fry & Deal, knew that the mortgage had been made by the company; that after this contract they took another one from the company, for which they expected to be paid out of the proceeds of the mortgage bonds, and they were so paid; that Fry & Deal filed their
240 lien in Polk county on the 3d day of August, 1878, for $6,333.16, a copy of which is herewith sent; that on the 18th day of October, 1878, they began a suit in the superior court of Polk county to "enforce their lien," and that action is now pending; that the amount due them from the company for work and materials on these trestles is $6,046.95, with interest from June 17th, 1878, at 6 per cent., amounting to $6,543.80.

John Garrison.

As to the claim of John Garrison, I find—

That in December, 1876, Jno. Garrison began work on the "Vaughn Creek trestle," in Polk county, under a contract with the company; that he furnished the timber out of which this trestle was built, but sublet the contract as to the work to Whisenaut & Sons; that the trestle was completed in August, 1877; that the company owe him a balance on this contract of $357.51, with interest from Aug., 1877; that on the 2nd day of June, 1877, he made
241 another contract with the company to build the "Mill Creek" trestle. He began work in July of that year, and completed it about the 17th of February, 1878; that the company owe him on this last contract $2,835.20, with interest from February 15th, 1878; that on the 2nd day of April, 1878, he filed a lien in Polk county, and began an action to enforce his lien in the superior court of that county on the 10th day of August, 1878, which action is now pending; that Jno. Garrison is a mechanic, and did some of the work, but his principle labor was as a contractor to superintend the mechanics and laborers employed by him; that he was not a stockholder in the company till 1878; that he was present at the meeting of the stockholders in 1876, and knew that the mortgage had been made. He was not able to fix the exact date of the completion of the work on the "Mill Creek" trestles.

242 *T. G. Williamson.*

As to the claim of T. G. Williamson I find—

That he was one of the engineer corps of the company; that the company owes him for his services $911.40, with interest from March, 1878; that he filed his lien in Polk county, on the 4th day of June, 1878, and that the amount due him, as above stated, is a balance, after deducting payments made by the company. I find that T. G. Williamson was not such a laborer for the company as was entitled to have a lien for this balance due him, and that he has acquired no lien on the property.

Finding as to Liens.

As to the "lien" claimed by J. E. Fry & J. A. Deal, partners under the name & style of Fry & Deal, and Jno. Garrison, I find that, if by virtue of the proceedings taken by them in the State courts, they acquired any lien on the property of the Spartanburg and Asheville R. R. Co., such lien is superior to the lien of the mortgage debt, and those parties having begun their action in the State
243 courts to enforce their alleged liens, and process having been served before the commencement of this suit, the jurisdiction of that court attached, and the said parties have a right to prosecute their actions to judgment, and that out of the proceeds of the sale of the property of the Spartanburg & Asheville R. R. Co., if sold under an order in this cause, a fund should be held subject to the final decision of the State court as to the alleged liens of these parties

Judgments against the S. & A. R. R. Co.

By reference to the proofs of debts filed, it will be seen that the following creditors now have judgments against the Spartanburg & Asheville R. R. Co., to wit, R. W. Allen, A. Cannon & J. P. Johnston, under the name & style of Allen, Cannon & Co., H. H. Gramlin, C. W. Pearson, Geo. C. Perrin, Thad. Coleman, L. J. Pace, and S. M. Rice & R. L. Coleman, partners under the name & style of Rice & Coleman. These actions were instituted in the State courts after the filing of the bill in this cause, without any permission of this court, so far as appears, and no process was served on the receiver,
244 and the judgments were taken without any appearance or answer on the part of the company or the receiver. All these facts relating to these actions appear in the transcripts filed.

Lien by Statute.

Several of the creditors, who have proved their debts, claim a lien upon the property of the company by virtue of Sec. 48 of chap. 27 of Battle's Revisal. As *as* to these debts I find and report as follows:

Rice & Coleman.

The contract between S. M. Rice & R. L. Coleman, partners under the name & style of Rice & Coleman and the company was made prior to October 1st, 1876, and for the particulars of that contract I refer to the minutes of the board of directors, page 58, which is in evidence. Under this contract S. M. Rice & R. L. Coleman, partners under the name & style of Rice & Coleman and work up to October 1st, 1876, amounting to $18,286.63, and the company paid them to that date $18,300.00. There is a balance due them for work done since the said date of $22,935.23, principal and interest from May 1st, 1878.

245 Coleman was shareholder in the company, but was not present at the meeting which authorized the making of the mortgage. He knew of the making of the mortgage and received after October 1st, 1876, about $62,000 in county bonds as cash from the company on this contract.

E. Clayton.

A full statemant of the account between E. Clayton and the company will be found in the list of debts proven. The company owes him the sum of $3,316.87 for work done on the South Carolina division of the road, that amount, including interest from August, 1876. This debt was due when the mortgage was executed. Another contract was made with him prior to October 1st, 1876, to do work on the Pacolet division, in this State, and the account shows the amount due him, and also the amount paid him by the company. There is a balance due him for work done since October 1st, 1876, of $23,661.05, including interest from November 1st,
246 1877. I find that E. Clayton was a stockholder of the company, and was present at the meeting at which the mortgage

was authorized, and did not vote against placing that incumbrance on the property; that he knew that the company had executed the mortgage, and was disposing of the bonds, and is himself the owner of some of the bonds. The State of N. C. had no interest in the corporation.

Finding that Above Creditors have no Lien.

As to all these claims, I find and report that these creditors have no liens upon the property of the company by virtue of the statute above referred to. I find and report that no part of the income of the road has been used in paying the interest on the mortgage debt, but that "running expenses" had absorbed more than the income up to the appointment of the receiver by this court.

Title to Portion of Road-Bed.

Two of the creditors above-named, to wit, S. M. Rice and R. L. Coleman, partners under the name and style of Rice & Coleman,
247 and E. Clayton, are the owners of the land on which a portion of the road is constructed.

Rice & Coleman.

S. M. Rice and R. L. Coleman, partners under the name and style of Rice & Coleman, while engaged in grading the road under a contract with the company, bought the land over which about two miles of their contract extended, and now the company having neglected to have the right of way through the land condemned according to law, they assert titles to the road-bed and superstructure on their land. I find and report that no damage was done to this land by the construction of the road through it, and if any damage was done by the taking of the right of way through it, such damage was more than counterbalanced by the benefit peculiar to this land arising from the building of the road.

E. Clayton.

As to the land claimed by E. Clayton, I find that it originally belonged to one Caruth, who by will devised it to his widow for life, with remainder over to his two children; that the company
248 obtained from the widow a deed in fee for the "right of way," and under that deed constructed the road on the land, E. Clayton doing the grading. That the widow having died, E. Clayton bought of one of the children, the remainderman, his interest, to wit, one-half in the land covered by the right of way. The other child is not of age; that Clayton paid $25.00 for his said title; that no damage was done to this land by the construction of the road. No steps have been taken by the company to acquire a title to the "right of way" over these tracts of land.

Property of the S. & A. R. R.

I find that the property of the Spartanburg & Asheville R. R. Co. consists of the road-bed and superstructure from Spartanburg, S. C., to Asheville, N. C., together with depots, &c., being the same property that passed into the hands of the receiver, with the addition of that part which was constructed by the receiver under the
249 order of the courts, with the funds raised on his "certificates of indebtedness," and that the company had title to all of the property, except the right of way over the Clayton and S. M. Rice & R. L. Coleman, partners under the name & style of Rice & Coleman, lands, above mentioned.

Receiver's Account.

I send herewith the account of the receiver, which I find to be correct, showing a balance in his hands on the 30th day of Sept., 1879, of $2,097.27, out of which is to be paid his commission.

These certificates are held by the following persons:

W. H. Inman	$5,000 00
H. B. Plant	6,250 00
R. Y. McAden	6,250 00
Alfred Austell	5,000 00
First National Bank of Charlotte, N. C.	12,500 00
Total	$35,000 00

Of this amount $33,954.75 was expended by the receiver in constructing the road, leaving a balance in his hands of this fund of $1,045.25.

The report of the receiver, herewith sent, shows fully the condition of the property, and his disbursements, all of which
250 I find should be allowed.

Full Title to Road-bed.

I find that S. M. Rice & R. L. Coleman, partners, under the name & style of Rice & Coleman and E. Clayton, who assert title to the land over which the road is constructed, have no right to recover the possession of the said land from the company, but that they are entitled to such damages as may be awarded to them in proceedings to be instituted in the State courts for the condemnation of the land for the use of the company under the statute.

From the foregoing statements, and the annexed schedule, it appears that the debtors of the company are as follows:

Total Debt.

Bonds owned absolutely	$11,900 00
Debts secured by mortgage bonds as collateral	272,419 06
Interest on $11,900 bonds to Nov. 1, '79, at 7 per cent.	1,943 66
Interest on the $272,419.06 to Nov. 1, '79	52,524 34
Total debt, having mortgages liens	$338,787 06

The debts proven, claiming a "mechanics' lien" are:

J. E. Fry & J. A. Deal, partners, under the name & style of Fry & Deal, principal & interest	$6,794 74
John Garrison, " " "	3,531 46
Total	$10,326 20

251 The other debts amount to $78,413.21

Distribution of Proceeds of Sale.

I report that a sale of the property is necessary, and that out of the proceeds of such sale, with the amount in receiver's hands, should be paid, (1) the costs of this suit and the amount of the certficates of indebtedness issued by the receiver; (2) that a sum sufficient to pay off the liens of J. E. Fry & J. A. Deal, partners under the name & style of Fry & Deal, and Jno. Garrison, in the event that it shall be finally determined in the State courts that they have a lien as claimed, shall be retained, subject to the result of these suits; (3) that the debts due to parties holding the mortgage bonds be paid next, the money being divided *pro rata* among them (if these be not sufficient to pay these in full) according to the amount of the bonds and coupons held by each creditor; (4) that the balance of the fund arising from the sale be applied *pro rata* to the other debts proven.

252 The testimony taken before me, by the several parties, and which is herewith sent, is not conflicting on any material point, and contains a full statement of the affairs of the Spartanburg & Asheville R. R. Co.

Respectfully submitted, A. BURWELL, *Referee.*

253 And on said 2d day of December, 1879, A. Burwell, special master, files in said court, with his said report, the following papers, in the order hereinafter named, viz:

The testimony of D. R. Duncan, T. H. Counts, W. K. Blake, R. Y. McAden, James Morris, G. W. Clayton, R. L. Coleman, J. A. Deal, John Garrison, V. R. Tommey, T. W. Chandler, A. Cannon, R. W. Cannon, J. B. Johnson, Sr., C. G. McDowell, T. A. Allen, J. E. Fry, Ehpraim Clayton, E. M. Clayton, G. C. Perrin, T. Coleman, R. B. Vance, G. Cannon, D. R. Duncan, J. A. Deal, and W. K. Blake, which said testimony is in words and figures as follows, to wit:

254 Circuit Court of the United States, Western District of North Carolina. In Equity.

V. R. TOMMEY *et al.*

vs.

THE SPARTANBURG & ASHEVILLE RAILROAD CO. *et al.*

The above-entitled cause having been referred to me as special master by an order of the Hon. R. P. Dick, judge of said court, I notified all the parties that I would proceed to hear the matters set

forth in said order, at Charlotte, in said district, on the first day of October, 1879. A copy of the notice sent by mail to each of the parties is appended. I also advertised for five weeks in the Carolina Spartan, a newspaper published in Spartanburg, South Carolina, and also in the Western Courier, a newspaper published in Hendersonville, North Carolina, copies of which advertisement are also appended.

According to the notice so given, I proceeded, on October the 1st, 1879, at the court-house, in Charlotte, N. C., to hear the case, when and where the following proceedings were had:

255 The following parties appeared: V. R. Tommey and the Atlanta Rolling Mill Company, by W. P. Bynum, att'y; and the Spartanburg and Union R. R. Co. and J. H. Anderson, the receiver, by W. P. Bynum, Esq.; the Spartanburg and Asheville R. R. Co., by D. R. Duncan, pres'd't; Mr. Merrimon, att'y for Eph. Clayton; the Com. of Buncombe Co. and J. E. Fry & J. A. Deal, partners under the name & style of Fry and Deal; Mess. Merrimon, Carter, and Coleman, att'ys for S. M. Rice & R. L. Coleman, partners under the name & style of Rice and Coleman, and Thad. Coleman; J. H. Rion, att'y for Wm. H. Inman; Mess. Morris and Shipp & Bailey, att'ys for T. G. Williamson.

(The following claims were presented: W. H. Inman, one note, $2,000.)

D. R. DUNCAN, president of Spartanburg and Ash-ville R. R., a witness introduced by W. H. Inman, makes oath that he is president of the Spartanburg and Ash-ville R. R. Co., and was such at the date of the making of the note filed; and that the said note was executed by him for said company, and under the corporate seal, and also the pledge of additional collaterals was so signed by him.

He further says that he is acquainted with the signature of W. W. Duncan, financial secretary of Wofford College, and that the said Duncan's signature to the assignment of said note is genuine. He further swears that all proper credits have been given on this note.

256 Cross-examined by J. H. MERRIMON, att'y:

The consideration of this note was cash borrowed from Wofford College, through its financial secretary, W. W. Duncan, for the Spartanburg and Ash-ville R. R., of which I was president. I had no special authority from the company to borrow this money, but borrowed it as general agent and president of the company, under what I considered to be the authority given me under the law as its president. I had no authority to hypothecate the bonds mentioned in the note, except as shown in the resolutions of the stockholders and directors, copies of which are filed, marked "A" & "B."

Redirect by Mr. RION:

Claim No. 2 shown witness, who says that he signed said note as president of the S. & A. R. R., and also the transfer of $100,000 mortgage bonds as collateral, and also the account stated, now shown him. I am acquainted with the handwriting of W. H. Inman, and

his signature is affixed to the account stated. It was signed in my presence. The note was given for the amount of $40,000, shown to be due W. H. Inman by the account stated.

257 & 258 This transaction was done under his general authority under the law as general agent of the company, and also under the authority of the resolutions of the stockholders and the board of directors set forth in Exhibits "A" & "B." These transactions (No. 1 & 2) appear in my general statement made to the directors of the financial operations of the company. This note is entitled to no credit.

(Account stated of drafts $19,893.50 and interest shown witness), and he says that paper marked No. 3 is correct copy of the original now in the possession of the witness, and the statement of drafts paid by Mr. Inman is correct. This account is entitled to no credit.

(Certificate of indebtedness of James H. Anderson, receiver, $5,000, May 10th, 1879, presented.)

Cross-examined by JAS. H. MERRIMON, att'y:

W. H. Inman was elected a director of the Spartanburg and Asheville R. R. Co. 29 of April, 1876, is now a director, and has been ever since his election, as above stated, & was one of the trustees in the mortgage made by the company to secure the bonds held by

259 him as collateral, and to secure all the bonds issued by the company, & was also a director of the Spartanburg and Union R. R. Co., and when the name of that company was changed to the Spartanburg, Union & Columbia R. R. Co. he became a director of that company, and has been ever since. The Spartanburg and Union R. R. Co. never held any of the bonds of the Spartanburg and Ash-ville R. R., but the S., U. & C. R. R. Co. holds $224,000 of these bonds.

This company obtained these bonds as collateral for the loan of $103,000 in money, or about that amount, advanced from time to time. At the time these bonds were delivered and money advanced Gabriel Cannon, W. H. Inman, and D. R. Duncan were directors in both companies,

The first hypothecation of bonds was made Jan'y 1st, 1877, to the following parties: Joseph Foster, ($1,000;) F. M. Trimmier, (25 of May, 1877,) (Jan'y 1st, 1877,) ($1,000;) Simpson Bobo, ($1,000;) Jno. H. Evans, ($1,000;) Jno. Cleveland, ($1,000;) Joseph Walker, ($1,000;) G. Cannon, ($1,000;) all these as collaterals for loans at 50 per cent.

The next hypothecation was Jan'y 8, 1877, to Wofford College, as shown in the note filed as claim No. 1.

The next was in Jan'y, 1877; was to George W. Williams & Co. $10,000 in bonds to secure $5,000.

260 The next was in Febr'y, 1877, to S., U. & Co. R. R. Co. ($8,000), to secure $4,000.

The next was in June, 1877, to S., U. & Co. R. R. Co. ($10,000), to secure $5,000.

The next was in April 21, 1877, to the Union Bank of Charleston, S. C., ($6,000), to secure $3,000.

The next was in April 21st, 1877, to the Bank of Charleston Nat. Bank Association ($6,000), to secure $3,000, and the same date, to the People's National Bank of Charleston ($10,000), to secure $5,000.

The next was on 26th April, 1877, to the First National Bank of Charleston ($7,000), to secure $3,500; same date, to Pelger, Rogers & Co. ($4,000), to secure $2,000.

21st April, 1877, C. T. Lowndes & Co. ($2,000), to secure $1,000; same date, to George W. Williams & Co. ($10,000); same rate.

April 26, 1877, to Jas. S. Gibbs, ($10,000); same rate.

May 22, 1877, to Edwin Bates & Co. ($2,000); same rate.

June 2, 1877, to A. S. Brown & Co. ($2,000); same rate

7th of May, 1877, Atlanta Rolling Mill Co. ($24,000), to secure note of $12,000, due for iron.

June 1st, 1877, Atlanta R. Mill Co. ($18,000), to secure note of $9,000 for iron.

261 July 1st, 1877, to W. H. Inman ($100,000), to secure note of $40,000.

Between Jan'y, 1877, & May, 1877, I sold to the South Carolina R. R. Co. bonds to the amount of $4,500 at par. They took them in payment of freight. The stockholders of the S. & A. R. R. met in Hendersonville Aug. 8, 1877. At the same time and place there was a meeting of the directors of the Co. I am sure I stated at the meeting Aug., 1877, before the board of directors, that I had no means of raising money except from the first mortgage bonds, and that every effort ought to be made to make sales of the bonds for the purpose of carrying on the work and meeting the obligations of the company as they became due. I am also certain that I stated the contract made with the A. Rolling Mill Co., and read the contract to the board, and was asked by some of the board upon what terms I was getting iron. I stated that I had hypothecated bonds in Charleston with the banks at 50 cents on the dollar. There was a discussion in the stockholders' meeting about raising the means to carry on the work. I stated to the meeting that, in my
262 opinion, the bonds should not be sold for less than 80 cents on the dollar. I think that Mr. R. Y. McAden stated in the meeting that he would take 10,000 or 20,000 at 80 cents if others would. I think Mr. W. H. Inman was not present. Gen'l Alfred Austell was only interested in the S. & A. R. R. as one of the owners of the S., U. & C. R. R. I don't remember whether or not he was present. He was a director of the S., U. & C. R. R. I knew Mr. Goodnough to be the general manager of the Atlanta Rolling Mill. I have heard Mr. Goodnough speak of Gen'l Alfred Austell as being a director of the Atlanta Rolling Mill Co. at the time I was buying iron.

(Objected to, by A. Rolling Mill Company.)

Mr. Goodnough introduced me to Mr. Morrell as the president of the A. Rolling Mill Co. I think Mr. Morrell said then that Gen'l A. Austell had got the company into this trade with the S. &. A. R. R. for railroad iron.

The bonds issued by the counties of Spartanburg and Union, S. C., were disposed of by me, $100,000 was issued by Spartanburg county, and $150,000 by Union county. They were issued in
263 Jan'y, 1876, and delivered to me about that time. These bonds were first hypothecated and then sold. We got, in May, 1876, $10,000; June, 1876, $10,000 from W. H. Inman, and hypothecated double that amount in bonds of these counties, and in July, 1876, $10,000, at same rate; August, 1876, $10,000; Sept., 1876, $10,000; October, 1876, $18,526.34, at same rate for iron; Oct. 6, 1876, $2,123.54 (for spikes, &c.), Oct. 9, 1876, $460.60 for Maine Insurance, Oct. 12, 1876, $8,000, Oct. 13, 1876, $1,529.40 (cash paid to N. C. penitentiary), Oct. 18, 1876, $19,280.85 for iron from New York; Oct. 27, 1876, $1,899.41, fastenings for iron; Nov. 1877, $10,000, Dec'r, 1877, $6,000, December, 1877, Maine insurance, $594.00; all of the above from W. H. Inman, whom we owed in the aggregate $126,245.54 up to Dec'r 31, 1876, at which time we were credited with proceeds of the sale of $210,900 bonds of these counties at 50 cents on the dollar, making $105,450.00, Dec'r 31, 1876, W. H. Inman gave us further credit for $30,000 of these bonds at 50 cents.

On May 2, 1877, I sold to Foster $2,000 of these bonds at 60 cents.

I sold to W. K. Blake, May 2, 1877, $4,000 of bonds at 60 cents.

The balance of these bonds, $3,100, were disposed of to Wof-
264 fard College Sept., 1877, and to the counties of Spartanburg and Union at 70 cents.

I sold the bonds hypothecated with Mr. Inman to him as above stated; I made the sale nearly a year after the hypothecation, as well as I recollect. The bonds were sold without any past due coupons attached. He charged us 12 per cent. interest on the money advanced us. Paper marked Exhibit "H," dated 30th March, 1876, being a contract between Cannon, Allen & Co. and S. & A. R. R. Co., was shown to the witness, who acknowledged the execution of this contract by him as president of said R. R. Co. J. H. Merrimon, Esq., offers in evidence paper marked Exhibit "C." Objected to.

The examination of D. R. Duncan was resumed by Mr. Merrimon, and the witness said:

Mr. W. H. Inman was paid 14 per cent. interest on his advancements on county bonds, such payment being made in coupons of county bonds at par which were due, but it was known that they would not be paid by the counties till one year after. No
265 interest is allowed on coupons in South Carolina. Mr. Inman also allowed $469.26 on this payment.

I hypothecated and sold all the county bonds Jan'y 1st, 1877.

They had no market value—not quoted.

The property of Spartanburg county was assessed at $4,732,240.00 in 1876. The debt of the county at that time was $318,000.

Property of Union county in 1876, $3,252,897.00. Debt of Union county about $165,000.00. I regarded the bonds as good, and believed the counties would pay. They were not prompt for 2 years in paying interest. Since, they have paid the interest about 4 to 6 months after it was due. The bonds bore 7 per cent. The interest

has not been paid when due, since the tax law of South Carolina was changed; allowing taxes to be paid by installments. This change was made since 1876. The bonds of Union county ran 20 years. Spartanburg county bonds issued in 4 series, 12, 16, 20, & 24 years, I think. Limit of county tax three mills in South Carolina for county purposes, but Legislature of the State authorized Spartanburg county to levy a tax of 1½ mills to pay interest
266 on these bonds from year to year. I speak from memory.

The company received of Mr. Inman $59,893.50 of principal, for which he holds $200,000 of first mortgage bonds as collaterals. Of this, $40,000 (note), has $100,000 as collateral, and the other $100,000 is held as collateral for the $19,893.50, as is set forth in Mr. Inman's claims as filed. W. H. Inman also holds the collateral bonds and coupons on the Wofford College note as assignee, (claim No. 1).

He also has in his possession $13,000 of first mortgage bonds. I have made no formal demand for these, but I understand that he claims them as a security for his debt. I did not hear this from Mr. Inman.

(Objected to by Mr. Rion, as incompetent,)

Mr. Jno. Inman stated to me in Dec'r, 1877, that he represented W. H. Inman, and I delivered these bonds (13,000) to him to carry them to W. H. Inman. I afterwards learned from W. H. Inman that he received them from Jno. H. Inman. Jno. H. Inman was a member of the firm of Inman, Swan & Co. These bonds were
267 sent to W. H. Inman as above at the suggestion of Jno. H. Inman (to which witness objected), who said he did not think W. H. Inman would sign any more bonds or advance any more money until he got more bonds. Jno. H. Inman was at the meeting of the creditors at Spartanburg, in Oct., 1878, and I reported to that meeting that W. H. Inman held $200,000 bonds as collateral. Something was said about these $13,000 bonds, which I denied were pledged for any loan. Jno. H. Inman, I think, spoke of the $13,000 bonds, but I can't be certain of that. He professed to represent W. H. Inman. This subject of the $13,000 bonds was only mentioned once, and that was in the meeting. I did not believe then, and do not believe now, that W. H. Inman would claim these bonds, unless he made further advances. He did not advance any more money after the date of the delivery of these bonds. He has declined to do so. I told him that he would have to give them up. He said, I think, that he would hold on to them if he could. I do not think he was in earnest about that. He has never offered to surrender them.

268 Thereupon the Spartanburg, Union and Columbia R. R. Co. offered claim No. 18, (papers filed,) and D. R. Duncan, president of the S. & A. R. R. Co. to whom said paper was shown, says:

That S., U. & C. R. R. advanced to the S. & A. R. R. the moneys as shown by the papers shown me. They are in the handwriting of the secretary and treasurer of that company, and the account is

correct. The amount shown due is $33,588.46, with interest to be added from the date of the several advancements at 10 per cent. The contract was made in the State of S. C., and the contract was for 10 per cent. interest on each advancement, and that I, as president, should hypothecate 1st mortgage bonds of S. & A. R. R. at the rate of $100 for each $50 advanced. The contract was made about 17 of Feb'ry, 1877, prior to or at the time of the first advancement on the account filed. The contract was not in writing. I was to hypothecate the bonds as the money was advanced. I drew the money both from the secretary & treasurer of S., U. & C. R. R. and from R. Y. McAden, president of that company, and when I did so, I laid aside the bonds at above rate, and would take
269 receipts from McAden for them when he came to Spartanburg from time to time. I actually delivered the bonds to McAden as follows:

June the 9, '77, at Spartanburg	$10,000
Jan'y, '78, at Charlotte	41,000
Feb'y 5th, '78	13,000
June 12, '77, by express	6,000

The rest of the bonds were handed to F. A. Counts, secretary of S., U. & C. R. R. between February 5 and March 28, 1878. I also delivered to McAden, president, $4,000 of bonds on account due S., U. & C. R. R. on construction account. There was a contract, not in writing, between the S. & A. R. R. and the S., U. & C. R. R. for the hire of engines and rolling-stock to aid in building the S. & A. R. R., and also for work and material to be furnished by S., U. & C. R. R. Co. The contract was that S., U. & C. R. R. Co. was to be paid in stock of S. & A. R. R. for all due on this contract up to June 1st, 1877, and after that time they were to be paid in cash, which payment was to be secured by the hypothecation of bonds at 50 per cent.

The S., U. & C. R. R. holds $82,000 in bonds to secure the above claim, and all the money advanced by that company was used in the construction of the S. & A. R. R.

270 In May, 1878, the S., U. & C. R. R. Co. agreed to loan the S. & A. R. R. Co. $70,000 for 12 months at as low a rate of interest as the company could borrow the money on the notes of S. & A. R. R. endorsed by the S., U. & C. R. R. The S. & A. R. R. Co. was to hypothecate $142,000 of its 1st mortgage bond- to secure this loan. I executed the three (3) notes, correct copies of which are filed, and now shown me, for the S. & A. R. R. Co. The S., U. & C. R. R. Co. borrowed that money from Jno. H. Inman, of New York, at 12 per cent., which was as low a rate as could be had in the market. Witness applied to many parties, and the individual endorsement of R. Y. McAden was offered to H. B. Plant, if a lower rate of interest was agreed upon, but it could not be had at any lower rate. Jno. H. Inman came to Spartanburg, S. C., and the notes were signed there, and the contract for the money was made there. This money, except about $775, came to the S. & A. R. R. Co. A part of

it was used in paying the A. R. Mill Co. for iron. The general manager of that company would draw on the president of the S., U. & C. R. R. Co. for amounts due from the S. & A. R. R. Co., and the drafts were paid by that president (McAden), and he would
271 then charge the amount paid to S. & A. R. R. Company. For the balance of this money drafts were drawn on president of S. U. & C. R. R. All of this money was expended for the construction of The S. & A. R. R.

Examination of D. R. DUNCAN resumed by Mr. MERRIMON:

I was a director of the S., U. & C. R. R. at the time of the contract for the loan of the $70,000, and was present. I did not act at that meeting as a director of that company, but was there solely as president of, and representing the S. & A. R. R. G. Cannon was a director in both companies and was present at that meeting. J. H. Inman was also present. Alfred Austell was present. The agreement between the two companies was that this money should be used exclusively in the construction of the road from its then termius (Tryon) to the town of Hendersonville, and I was to draw the money as the exigencies of that work required.

(Contract in regard to this money proved and put in evidence, Exhibit —.) I drew a draft about September, 1878, on the S., U. & C. R. R. Company. It was not paid for a week or less. The president of the S., U. & C. R. R. and myself had a correspondence
272 about this draft. It was not protested. I do not know why it was not paid on presentation.

At the meeting spoken of, of the S., U. & C. R. R., the indebtedness of the S. & A. R. R. was mentioned. There was a meeting of the directors of the S., U. & C. R. R. Co. at some time prior to the meeting above spoken of, when I was present with Col. Cannon, representing the S. & A. R. R. Co. At that meeting it was agreed between the two (2) companies, that if the bonds due by the State of S. C. to the S., U. & Co. R. R., or its owners, could be obtained, then S., U. & C. R. R. would loan a sufficient number of these bonds to the S. & A. R. R. Co. to enable it to complete the road to Hendersonville, and that this loan should be secured by the hypothecation of mortgage bonds of S. & A. R. R. Co. at 50 per cent.

In pursuance of that arrangement Col. Cannon and myself did all in our power to secure the bonds from the State of S. C. We failed to get the State bonds. The S. & A. R. R. Co. was to get enough of State bonds to enable it to realize $60,000 to $70,000 from sale of such bonds, and was to deliver to S., U. & C. R. R. Co. its 1st mortgage bonds double the sum so realized. There was at that meeting a general discussion of the indebtedness of the S. & A.
273 R. R. Co. to its contractors, to the A. R. Mill Company, and others, including its officers. I stated that the company was largely indebted, and was in need of money. W. H. Inman was present, Alfred Austell was present, R. Y. McAden was present, Jno. H. Inman was present. W. H. Inman said to me, in New York, that he had put as much money in the S. & A. R. R. as he could afford, but that Jno. H. Inman had money, and that he would see

him, and if Jno. thought well of it he would go out and see the road. This all related to a proposition to raise $50,000 to complete the road to Pace's Gap. I know of *know* suit in which the validity of the county bonds issued to S. & A. R. R. is in question. These bonds were issued in accordance with a vote of the people of the respective counties. I know that the supreme court of S. C. has ordered certain questions to be argued before in a case from York county, involving the validity of all bonds issued by any county in that State, as I understand it. One of the questions involves the question of the counties being corporations. I gave W. H. Inman the $40,000 note in Spartanburg. The other contract was
274 made there too. The legal rate in S. C. is 7 per cent., and the penalty is a forfeiture of all interest if more than 7 per cent. is charged. Committees were appointed to sell the bonds at 80 cents, as appears from the minutes of the meeting. These committees were appointed in accordance with the resolutions passed at the stockholders' meeting, a copy of which is filed.

When the mortgage was made the creditors of the company were neither paid nor secured—neither contractors nor others.

No demand was made by Mr. Tommey or the A. R. M. Co. for interest on the bonds. Had they demanded the interest or their debt in July I could not have paid it, as I had no means except the $70,000, to be otherwise used.

The first note, $4,000, was due May 7, 1878; payment of it was demanded. The trustees in the mortgage did not take possession of the road.

All the iron purchased from the A. R. Mill Co. was put on the road except six or seven car loads. Mr. Anderson told me he had moved that much of the iron to the S. U. & C. road, and had laid it on that road. He was superintedent of the S., U.
275 & C. R. R., and was also superintendent of S. & A. R. R., appointed by myself. I thought I had the authority to appoint, as president. It was generally known that he was so acting. He charged nothing. We were using the rolling-stock of the S., U. & C. R. R. R. Y. McAden, W. H. Inman, and Alfred Austell were, I suppose, familiar with the financial condition of the S. & A. R. R. Company; I have talked with them about it. I have said to them that the company was largely indebted, and they were frequently on the road. There was no agreement to exchange with Mr. Inman mortgage bonds for county bonds. George W. Williams & J. H. Evans were directors on the S. & A. R. R. Company. I have now $20,000 to $30,000 of mortgage bonds never issued. At the meeting at Hendersonville, R. Y. McAden said, (to Mr. Fagg, I think), in his speech, that he would take all the bonds at 80 cents if the others did not hasten to take them.

Examined by Mr. McADEN:

At the meeting at Hendersonville I, in a speech, urged the people to invest in the bonds at 80 cents and also urged the contractors to take them at that rate for their work and for past due debts.
276 R. Y. McAden did not obligate himself to take all the bonds

at 80 cents, so that I as president could avail myself of his offer. He had offered to take $20,000, and the rest of his remarks I considered as intended to urge the people to buy the bonds.

Examined by Mr. RION:

(Agreed that from Dec'r, 1866, to the 20 of December, 1877, (16 Stat., 325,) any rate of interest was lawful in S. C. which the parties might contract in writing to be paid, and in the absence of any contract 7 per cent was the legal rate.)

In the matter of the claim presented by W. H. Inman, and in all matters relating thereto, I dealt with him individually, and not as a member of Inman, Swan & Co. That firm is not to my knowledge interested in any of these claims, nor is Jno. H. Inman, to my knowledge. In all dealings with Jno. H. Inman he was dealt with in same way. The firm of Inman, Swan & Co., nor W. H. Inman, to my knowledge, had any interest in the $70,000 loan. There was no concealment of any of the transactions with W. H. Inman, J. H.
277 Inman, A. R. Mill Co., Wofford College, Charleston banks, or any other creditors with whom I hypothecated bonds, nor any effort at concealment. I never declined to answer any questions about the hypothecation of bonds or the borrowing of money. Every act I performed was done with a view to promote the best interests of the company, and with that object only. I cannot see even now how I could have acted otherwise than I did. I always, before any hypothecation, tried the market thoroughly and did the best for the company I could. The financial condition of the country prevented the consummation of one of my plans to dispose of all the bonds on favorable terms. I also state that neither directly or indirectly did I in any manner, shape, or form receive any benefit from, nor was I individually interested in, any transaction for the company. The road now owes me about $3,500, for which I have no security. I could not find any one who was not in some way interested in the road or connected in some way with it to extend any accommodation to the company by loans or otherwise. No one seemed to want to invest in the securities at the disposal of the company. I
278 never had any transaction with any person or corporation in which there was any fraud or unfairness whatever. I had to sacrifice some of my own private property to meet an obligation I had incurred for the company. There was not a dollar in the treasury when I took charge, and the debts were then some $35,000. The proximate cause of the necessity for the road being put in the hands of a receiver was the failure of the road to meet its liabilities. Many efforts were made to prevent it. If the bonds had been taken at 80 per cent. as proposed this would have been prevented. We proposed to the creditors that all the 1st mortgage bonds should be cancelled and a new mortgage made for $200,000, 1st mortgage, and then a second mortgage to secure all the then creditors, including all who then held bonds as collaterals. The interest on the first mortgage was to be postponed a year or two, and the second mortgage bonds were to be divided *pro rata* among the creditors. The first mortgage

bonds to be sold only at par. I think that if this had been asserted to the road would have gone on all right. Jno. H. Inman, for
279 W. H. Inman, and also the S., U. & C. R. R., and the agent of the A. R. Mill Company, agreed to it, and all the contractors, except Clayton, Fry & Deal, Garrison, who were present. The plan could not be carried out except with the unanimous consent of the creditors, and that failing, suits were brought by some of the contractors. Some liens had been filed before that, and all these things forced the holders of the mortgage bonds to take action to protect their rights. In my opinion I know of no other course they could take consistently with their interests.

Examined by Mr. BYNUM:

I suppose that the contractors had a knowledge of the affairs of the company. I talked with them and nothing was concealed. They generally attended the stockholders' meetings, at which the matters were discussed and the report of the officers made. At these meetings statements were made of the state of affairs. The existence of the mortgage was publicly announced at the stockholders'
280 meetings, and was generally known. I think it was known that after the meeting in 1877 the company had no other source to draw money but the mortgage bonds. In 1876, when it was resolved to make a mortgage, it was announced that the assets of the company were exhausted, and hence the necessity for a mortgage, E. M. Clayton (who was connected with the work), Mr. Fagg, Thad. Coleman were present, I think. The contractors often urged payment for their work. I always told them I was making every effort to raise money on the company's securities, and could not do so, either by sale or hypothecation. I stated to the directors of S., U. & C. R. R. that I had no fear of the contractors if we could complete the road to Hendersonville, when we could negotiate our bonds. This was the time of the $70,000 loan. Rice & Coleman & Fry & Deal were informed by me of that loan and its contents, and they took contracts, to be paid for out of that money. And they were so paid. In July, 1878, the company owed interest to the S., U. & C. R. R., to banks in Charleston, to Woffard College, W. H. Inman, and others, and it was not possible to pay it, and has not been since, and is not now.

281 Examined by Mr. MERRIMON:

When the proposition was made to make a first mortgage for $200,000, as above stated, it was not to be stated in the mortgage that there should be no foreclosure within one (1) year after road was finished to Asheville; but the contractors, or some of them, proposed a 1st mortgage should be put on the road sufficient to pay off them and to complete the road.

My idea was that the 1st mortgage bonds ($200,000) could be disposed of at par to those who held the other bonds, that is, to S., U. & C. R. R. and others. The contractors assigned as their reason for refusing the proposition, that the road would be sold under the 1st mortgage, and then the second mortgage bonds would be worthless.

And thereupon there was an adjournment of the hearing to 9 a. m., Oct. 3, 1879.

The hearing of the case was resumed according to adjournment, when the examination of D. R. Duncan was resumed by Mr. Merrimon, and he said:

The executive committee of S. and A. R. R. Company was
282 G. Cannon, J. H. Evans, T. B. Jeter, and V. Ripley. During a portion of the time Mr. Evans was not on it, and Jeter was not. I was chairman. We had several meetings—some informal. The transactions with county bonds were done without any written order of executive committee. A majority of committee lived in Spartanburg. I would tell those of my acts of hypothecation after it was done, and the members of the committee would approve of it. I had no express order before acting. They seemed as members of executive committee individually to recognize my power to act and to approve of what I reported to them I had done. Frequently Mr. Jeter would congratulate me on what I had accomplished in the way of raising money. We kept a minute book, but no record was made [of] informal meetings.

(A book shown witness and proved to be the minute-book of executive committee, and put in evidence.)

G. Cannon went with me to Charleston to assist me in raising money on mortgage bonds in 1877.

All the hypothecations of mortgage bonds were transacted
283 in the same way as county bonds as above stated.

(Copy of by-laws shown witness, proved and put in evidence Exhibit I.)

J. B. Cleveland, one of the trustees, knew that the work was being carried on, and was once at least on the line.

I was a director of S. &. U. R. R. before organization of S. & A. R. R., and have been ever since of that company and S., U. &. C. R. R.

I had no experience in dealing in bonds prior to my presidency of S. & A. R. R.

The mortgage deed was prepared by me. I talked with my att'ys in Spartanburg. I compiled it from other R. R. mortgages.

(Original mortgage shown witness.)

Jeter and Wiley signed this deed as directors after it was executed by me as president; how long I can't say. My recollection is that this deed was not formally delivered to the trustees till it was recorded in Spartanburg.

Jeter and Wiley signed it after that. It has not been since registered there I think.

The deed was in the possession of the trustees several times, but I do not remember formally delivering it to them, or either of them. They signed the mortgage and certified the bonds. That mortgage was reported to directors and approved.

(Extract from minutes, page 68, put in evidence.)

The mortgage was not read, nor was it there or called for. At the annual meeting of directors, 1876, I had with me a copy of
284 the mortgage of a Florida R. R., of which one Wagstaff was president, from which I had taken extracts, marked. I read them to board of directors; discussed in detail what should be the terms of the proposed mortgage, even as to how the coupons should read. I kept these extracts and incorporated the same provisions in the mortgage of S. & A. R. R. the directors approved.

(Objected to by Mr. Merrimon, unless witness will produce the writing spoken of, or repeat the substance thereof.'

I had no authority about the form and provisions of the mortgage but the resolutions of the board of directors. I never sold to V. R. Tommy any of the bonds of S. & A. R. R. Company.

The A. R. Mill Co. never gave me any notice of the sale of the bonds, nor to the company.

I was written to by president of First National Bank that he would sell what his bank held. They were not sold.

Examined by Mr. CARTER, for Rice & Coleman:

After the contract with Rice and Coleman, as shown in the minutes of board of directors, the engineer revised the line of road, and reported to me that by that revision the work north of Green river had been lightened, and that in his judgment it was to the interest of the company; that section 42 should be worked out by Rice and Coleman, and let convicts work on south side of river. I then changed the contract, Rice and Coleman agreeing to do 42nd section and give up all on the south of river. Terms of contract same in all other respects. They were to do the 42nd section in lieu
285 of that south of river, and did do it. The contract as modified was to do all the work on this line between the river and Butt Mountain Gap. This modification was not in writing as far as I know, and was made before Rice and Coleman did any work on 42d section, I think.

It was always understood between the company and contractors that the line could be changed by the chief engineer, and that if work was to be hurried up [the] company could put on [an] additional force and complete the work itself. I had no special authority to admit the allegations of the bill in my answer, but all the facts set out in my answer are true to the best of my knowledge and belief.

Examined by Mr. BYNUM:

I do not remember that the change of contract with Rice and Coleman was reported to [the] board, but was mentioned to the members of the board in meetings, talked about, and not disap--roved of.

Question. Was that change approved of by anyone of the board; if so, by what one?

Answer. I cannot call the name of any one of the board who ap-

proved of it, but I am satisfied that it was approved of by members of the board informally. There is no record of any such approval. It was talked of approvingly at the meetings, and was never objected to that I know of. Five miles from Green River to Butt Mountain Gap; 42d is one mile.

286 The contract was that Rice and Coleman were to take Henderson county bonds for their work, and to my knowledge that part of the contract was not changed. We paid out those bonds to contractors till they were exhausted. When those bonds were all paid out the contractors knew it. After that the contractors wanted to quit work, but at my solicitation they went on with the work, on my assurance that the company would do its best to pay them, and that they would be paid at cash prices, which was less than the bond prices. The bond was rated at 65 cts. The "bond price" was $\frac{1}{3}$ more than the "cash price," so the price was reduced $\frac{1}{3}$. The contractors assented to this.

Examined by Mr. CARTER:

I paid some Henderson county bonds to Cannon, Allen and Company. I am under the impression that Rice and Coleman asked for bonds of Henderson county in payment for work, and I had none to give them. I also paid out $2,500 or $3,000 to other parties on same part of road in such bonds. Henderson county bonds are worth more than 65 per cent. now. W. H. Inman was over the line of the road after the Henderson county bonds were all paid out and while Rice and Coleman were at work. He knew that we were paying them in Henderson county bonds, and had purchased some bonds of them.

By Mr. COLEMAN:

The engineer's estimates were made out, payable in money, at "bond prices;" that is, the amount of the estimates could be paid by the company by the delivering to the contractors of that
287 amount of bonds at par. This was the case up to the time that the bonds were exhausted.

(Exhibit E put in evidence and proved to be the form of estimates up to completion of Rice and Coleman's contract from Green river to Butt mountain.)

And the sums of money called for in these estimates to be paid for the work mentioned therein were to be paid in Henderson county bonds at the rate of 65 cents, in money, on the dollar in bonds. This manner of paying the estimates does not appear therein, but was agreed upon verbally between the parties. After the bonds were exhausted, I made an agreement with either Rice or Coleman that the work should go on, on the basis of the old contract and on same terms, but, as the company could not longer pay in bonds, it would pay in cash at same ratio of cash to bonds.

It was the understanding and agreement between said parties that the estimates were not to be paid thereafter in cash at face of estimates, but in cash at bond values originally agreed upon.

Mess. Shipp & Bailey file claims of T. G. Williamson, a creditor of the S. & A. R. R. Company, and examine the witness, D. R. Duncan, who says:

I know that T. G. Williamson served as assistant engineer of S. & A. R. R. from 1875 to March, 1878. There is a balance due him of $911.40, at rate of $125 per month. (Interest claimed from Mar. 1878.)

Examined by Mr. BYNUM:

288 The S. & A. R. R. Company owe the Atlanta Rolling Mill Co. $55.000.00 principal, with interest at 10 per cent., as follows:

On $12,000, from May 7, '77.
On $9,000, " June 9, '77.
On $7,500, " Sept. 10, 77.
On $10,000, " May 25, '78.
On $7,500, " July 15, '78.
On $3,000, " Aug. 9, '78.
On $6,000, " Sept. 24, '78.

That company hold as collateral to secure payment of this debt $110,000 of mortgage bonds, under a contract, a copy of which is filed.

The iron was all purchased under this contract from that company. The prices charged were reasonable, and, after inquiring of all first-class mills in the country, I could get no lower offers.

I visited two (2) mills in person—first-class mills—and could get no more favorable offer. The iron was laid down on the S. & A. R. R., except as stated before. I hypothecated the bonds at the very best terms I could obtain. I had great difficulty in inducing the company to take them at 50 per cent. as collateral.

The S. & A. R. R. Co. owes the A. R. Mill Co. a small amount above this $55,000, for which they hold no collaterals. I do not know exact amount so due.

E. Clayton worked out the contract through and over the Caruth land in Polk county, and I learn from Mr. Clayton that he completed the work on that land in Oct., 1877.

By Mr. MERRIMON:

289 There is and was but one rolling mill at Atlanta. I do not know that it is an incorporated company or not. The mill called in the contract the Scofield mill is the same one that is called the Atlanta Rolling Mill Company. I purchased some iron for S. & A. R. R. in 1876 for $36½ & $38½, all cash on delivery at wharf in Perth Amboy, N. Y. I paid freight on this iron in bonds at par to S. C. R. R., and to S. & U. R. R. in stock at par. The iron from the Atlanta Rolling Mill Company was delivered at Spartanburg free of freight, with privilege of using C. & A. line cars to carry the iron out on S. & A. R. R. $1.50 per ton is usual freight on iron from Atlanta to Spartanburg; $2.00 was the freight from Perth Amboy to Charleston, S. C.; 20 cents wharfage at Charleston,

S. C.; one dollar per ton drayage. From Charleston to Alston, S. C., about $5.00—between $4.00 and $5.00. About 2.00 per ton on S. & U. R. R. in stock. Carolina Central R'y Co. offered to ship this iron to Charlotte at $4.75 cash. The arrangement I made was the best I could do.

The quality of the iron ('76) was good. That from Atlanta Rolling Mill Company was also good—50 lbs. to the yard.

Iron was quoted in New York, Jan'y to July, '77, at mills, at $35 for first-class iron.

By Mr. BYNUM:

There is considerable difference between cash and credit prices for iron. I had to pay a large price on account of the terms of payment.

290 South Car. R. R. took bonds in payment for freight only to aid S. & A. R. R., and as an accommodation, and to aid in the building of the road.

(The mortgage of the S. & A. R. R. Co. to W. H. Inman and J. B. Cleaveland was then put in evidence by Bynum, att'y.)

By Col. COLEMAN:

There was a written contract between Rice and Coleman, and The S. & A. R. R. Co. in regard to the work from Pacis Gap to Butt's Mountain Gap. I had forgotten that such a written contract was made when testifying heretofore on this subject. That writing is not in possession of the Company, but is, as I am informed, in possession of Thad. Coleman.

Rice and Coleman agreed to the contract as set out in the minutes of the bond as already in evidence. This writing was signed, but was never delivered to Rice and Coleman or to any one for them as far as I know. I have only a strong impression that I signed such a paper for the company. I do not know that Rice and Coleman signed it, except from what they told me.

By SHIPP and BAILEY, att'ys:

Question. State what is the duty of a civil engineer in the construction and building of a railroad, and whether or not the work performed by such an officer is not important and necessary?

291 Answer. It is the duty of a civil engineer to superintend and estimate the construction and grading of the road, and it is essential to have a civil engineer in the construction of the work.

By Mr. MERRIMON:

Did G. W. Clayton tell you of his hearing the conversation between Inman and Austell, detailed by him on the day after he alleges he had it, and tell you the substance of it, and was the proposition or such a one made to you by Mr. Inman or any one?

Answer. He did substantially. No such proposition was made to me by Mr. Inman or anyone else.

Mr. Thompson, att'y for A. R. Mill Company, at the meeting of

the creditors at Spartanburg, Oct. 15, 1878, during the discussion, said that his client (A. R. Mill Co.) was so pressed on account of the failure of S. & A. R. R. Company to pay its debt to the company, that that Co. would be compelled to take steps to collect its claim, unless some satisfactory arrangement could be made; that he was willing to make for his client as great a sacrifice as any one to make a settlement with all the creditors.

292 D. R. DUNCAN, examined by Mr. BYNUM:

The bonds held by the Atlanta Rolling Mill Company have coupons, one due Jan'y 1st and July 1st, 1878, and all due since that date, and, perhaps, some coupons due July 1st, 1878. None of these coupons have been paid, and none of them could or would have been paid by the S. & A. R. R. Co., if payment had been demanded.

The S. C. R. R. Co. owns $4,500.00 1st mortgage bonds, purchased at par, in April, 1877. The coupons on these bonds, due July 1st, 1877, were presented for payment, were not paid until Oct. 1877, when they were paid in a settlement of the "ticket" account between the S. & A. R. R. and the S. C. R. R. Company, the latter company using them as cash in that settlement. About that time I notified the superintendent of S. C. R. R. Co. that the S. & A. R. R. Co. would not be able to pay the Jan'y, 1878, coupons. In Jan'y, 1878, the S. & A. R. R. Co. was not able to pay the coupons then due, and has not since been able to pay the interest on the mortgage debt, and it was generally understood among the holders of the bonds that the company could not pay the coupons.

By Mr. MCADEN:

293 The notes for $70,000 to S., U. & C. R. R. Co. were delivered by me to Mr. McAden, president of S., U. & C. R. R. Company, in the office of Inman, Swan & Co., in New York, and I also there delivered to him the collateral bonds.

By Mr. BYNUM:

The S. & A. R. R. Company never deposited any funds in New York or Charleston to pay the coupons on the mortgage bonds. It had no funds that could be used for that purpose.

The paper (Exhibit F) is a copy of the notice sent by me to each of the creditors of the S. & C. R. R. Company to call a meeting of the creditors at Spartanburg, Oct. 15, 1878.

The amount of bonds issued by the S. & A. R. R. Company, under the mortgage, is $641,900.00, of these the S. C. R. R. Company owns $4,500.00, E. Clayton owns $2,400.00, and the remainder ($635,000.00) are held as collaterals; $28,100 are in my hands, and have never been issued or hypothecated.

I delivered to Mr. W. C. Cannon, in July or Aug., 1878, $1,200 in bonds, as collateral to secure his account for supplies. He had refused to furnish more supplies unless we would secure him, and these bonds were delivered to him, according to promise made by the secretary and treasurer that he should be secured.

294 D. R. DUNCAN, witness for the plaintiff, being sworn, says:

A copy of a note is exhibited to the witness, executed by the S. & A. Company to the Atlanta Rolling Mill Company, date Sept. 1st, 1877, for twenty-five hundred dollars. This is a correct copy of said note, filed and marked (M. G.) It was executed for the purchase of iron.

Defendants except to the introduction of a copy of the note.

The company executed three notes for the sum of four thousand dollars each, dated in May, 1877, and due twelve, eighteen, and twenty-four months from date. The next notes that were executed were in July, I think, 1877, each for three thousand dollars, due respectively in twelve, eighteen, and twenty-four months. The next notes, my recollection is, three twenty-five hundred dollars each, and due respectively twelve, eighteen, and twenty-four months, and bearing date Sept., 1877. Notes were not executed for all the indebtedness, these notes bearing interest at ten per cent. I think the first notes were executed at Spartanburg, and think they were all executed at Spartanburg, and have no recollection that any were executed in Atlanta.

The contract between the S. & A. Co and the Atlanta Rolling Mill Company, for the purchase of iron, was made at Spartanburg, S. C. A duplicate of said contract is on file in this case as an exhibit in the testimony taken at Charlotte, on the first day of Oct.,
295 and is referred to. Said contract for the purchase of iron was made at Spartanburg, and is a South Carolina contract. After the contract was executed here I was in Atlanta, and got a duplicate of the contract executed there by Wm. Goodnow.

I read my annual report to the directors and stockholders of the S. & A. Company at their annual meeting in August, 1877, which report is filed as an exhibit and marked (O. G.) This is the same report which was read before the directors and stockholders at the said meeting. The contents of this report was fully and freely discussed in the directors' meeting before the reading of it before the stockholders. There was no disapprobation expressed at the directors' or stockholders' meeting as to the course pursued by me with reference to the bonds or my other transactions.

I distinctly recollect that before the board of directors this bond question was discussed, and then Mr. Jeter, one of the directors, remarked that I had done remarkably well in getting a loan at 50 cents on the dollar; that his bank had declined to loan at all upon these bonds.

Mr. Cannon, another director, remarked that if Buncomb and Henderson would come up like Spartanburg and Charleston it would help out, and Mr. Ripley, another director from Henderson county, remarked that he was doing better; that Henderson county bonds could be got at fifty cents on the dollar, which was better
296 than any railroad bonds. At the same time, after the reading of my report before the directors and stockholders, I was re-elected unanimously president.

Cross-examination:

Most of these notes heretofore spoken of were signed by me in Spartanburg and delivered to the Atlanta Rolling Mill Company in Atlanta by express, and perhaps once by hand. In Jan'y, 1878, there was an interest due the Atlanta Rolling Mill Co. from the S. & A. Co. upon their notes, the first of which fell due in May, 1878. I made the first deposit of bonds, twenty-four thousand dollars, in May, 1877.

In Jan'y, 1878, I can't recall what we had to our credit, but think it very doubtful unless we had stopped our works. In Jan'y, 1878, we were paying our current expenses partially. If all the parties to whom we owed money had closed down upon us about Jan'y, 1878, we could not have met the payments. We did not have assets at that time to pay off all our liabilities, but the property of the company at that time was worth largely more than the debts of the company. I don't think though that the property at that time, in its condition, could have been sold for enough cash to pay our indebtedness.

The notes I gave the Atlanta R. Mill Company were in pursuance of our original contract, a copy of which is on file at Charlotte and has heretofore been alluded to. There was no modification
297 of that original contract. The copy of the note herewith filed is the usual bank form, and all the other notes to the Atlanta Rolling Mill Company are substantially in the same form.

Re-examined:

The notes given in Charleston, the first fell due about the last of April, 1878, and the others fell due in May and April, 1878. I paid interest on two of the Charleston notes when they fell due, and they were renewed. I was asked to pay the other notes, but was not able to do it. They were not protested. I asked indulgence inasmuch as they were friends of the road, and they granted it, but refused to lend us any more money. The debt due the S., U. & C. Company for twenty-five thousand dollars was due, I think, in Febr'y and March, 1878. We were not able to pay it, and they granted us indulgence also.

Inman's first note for forty thousand dollars was due July 1st, 1878. We were not able to pay that either. I don't know that he said anything about indulging us. He made no demand for payment.

D. R. DUNCAN.

298 Twelve months after date The Spartanburg & Asheville Railroad Company promise to pay to the Atlanta Rolling Mill Company, or their order, at the Atlanta National Bank, at Atlanta, Ga., twenty-five hundred dollars, for value received, with interest from date, at the rate of ten per cent. per annum, having deposited with said Atlanta Rolling Mill Company, as collateral security for the payment thereof, five of the 1st mortgage bonds of said company for one thousand dollars each, and first coupons of

294 D. R. DUNCAN, witness for the plaintiff, being sworn, says:

A copy of a note is exhibited to the witness, executed by the S. & A. Company to the Atlanta Rolling Mill Company, date Sept. 1st, 1877, for twenty-five hundred dollars. This is a correct copy of said note, filed and marked (M. G.) It was executed for the purchase of iron.

Defendants except to the introduction of a copy of the note.

The company executed three notes for the sum of four thousand dollars each, dated in May, 1877, and due twelve, eighteen, and twenty-four months from date. The next notes that were executed were in July, I think, 1877, each for three thousand dollars, due respectively in twelve, eighteen, and twenty-four months. The next notes, my recollection is, three twenty-five hundred dollars each, and due respectively twelve, eighteen, and twenty-four months, and bearing date Sept., 1877. Notes were not executed for all the indebtedness, these notes bearing interest at ten per cent. I think the first notes were executed at Spartanburg, and think they were all executed at Spartanburg, and have no recollection that any were executed in Atlanta.

The contract between the S. & A. Co and the Atlanta Rolling Mill Company, for the purchase of iron, was made at Spartanburg, S. C. A duplicate of said contract is on file in this case as an exhibit in the testimony taken at Charlotte, on the first day of Oct.,
295 and is referred to. Said contract for the purchase of iron was made at Spartanburg, and is a South Carolina contract. After the contract was executed here I was in Atlanta, and got a duplicate of the contract executed there by Wm. Goodnow.

I read my annual report to the directors and stockholders of the S. & A. Company at their annual meeting in August, 1877, which report is filed as an exhibit and marked (O. G.) This is the same report which was read before the directors and stockholders at the said meeting. The contents of this report was fully and freely discussed in the directors' meeting before the reading of it before the stockholders. There was no disapprobation expressed at the directors' or stockholders' meeting as to the course pursued by me with reference to the bonds or my other transactions.

I distinctly recollect that before the board of directors this bond question was discussed, and then Mr. Jeter, one of the directors, remarked that I had done remarkably well in getting a loan at 50 cents on the dollar; that his bank had declined to loan at all upon these bonds.

Mr. Cannon, another director, remarked that if Buncomb and Henderson would come up like Spartanburg and Charleston it would help out, and Mr. Ripley, another director from Henderson county, remarked that he was doing better; that Henderson county bonds could be got at fifty cents on the dollar, which was better
296 than any railroad bonds. At the same time, after the reading of my report before the directors and stockholders, I was re-elected unanimously president.

Cross-examination:

Most of these notes heretofore spoken of were signed by me in Spartanburg and delivered to the Atlanta Rolling Mill Company in Atlanta by express, and perhaps once by hand. In Jan'y, 1878, there was an interest due the Atlanta Rolling Mill Co. from the S. & A. Co. upon their notes, the first of which fell due in May, 1878.

I made the first deposit of bonds, twenty-four thousand dollars, in May, 1877.

In Jan'y, 1878, I can't recall what we had to our credit, but think it very doubtful unless we had stopped our works. In Jan'y, 1878, we were paying our current expenses partially. If all the parties to whom we owed money had closed down upon us about Jan'y, 1878, we could not have met the payments. We did not have assets at that time to pay off all our liabilities, but the property of the company at that time was worth largely more than the debts of the company. I don't think though that the property at that time, in its condition, could have been sold for enough cash to pay our indebtedness.

The notes I gave the Atlanta R. Mill Company were in pursuance of our original contract, a copy of which is on file at Charlotte and has heretofore been alluded to. There was no modification
297 of that original contract. The copy of the note herewith filed is the usual bank form, and all the other notes to the Atlanta Rolling Mill Company are substantially in the same form.

Re-examined:

The notes given in Charleston, the first fell due about the last of April, 1878, and the others fell due in May and April, 1878. I paid interest on two of the Charleston notes when they fell due, and they were renewed. I was asked to pay the other notes, but was not able to do it. They were not protested. I asked indulgence inasmuch as they were friends of the road, and they granted it, but refused to lend us any more money. The debt due the S., U. & C. Company for twenty-five thousand dollars was due, I think, in Febr'y and March, 1878. We were not able to pay it, and they granted us indulgence also.

Inman's first note for forty thousand dollars was due July 1st, 1878. We were not able to pay that either. I don't know that he said anything about indulging us. He made no demand for payment.

D. R. DUNCAN.

298 Twelve months after date The Spartanburg & Asheville Railroad Company promise to pay to the Atlanta Rolling Mill Company, or their order, at the Atlanta National Bank, at Atlanta, Ga., twenty-five hundred dollars, for value received, with interest from date, at the rate of ten per cent. per annum, having deposited with said Atlanta Rolling Mill Company, as collateral security for the payment thereof, five of the 1st mortgage bonds of said company for one thousand dollars each, and first coupons of

which are due Jan'y 1st, 1878, and which said bonds, or any part thereof, the said Spartanburg and Asheville Railroad Company hereby authorize said Atlanta Rolling Mill Company to sell without notice at public or private sale, at the option of said Rolling Mill Company, in case of the non-payment of the above promise, applying the net proceeds to the payment of this note, including interest at the rate of ten per cent. per annum, and all counsel fees
299 and expenses incurred, and accounting to the said railroad company for the surplus, if any. In case of deficiency the said Spartanburg and Asheville Railroad Company promise to pay to the said Atlanta Rolling Mill Company the amount thereof, forthwith after such sale, with legal interest.

[SEAL.] THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY,
By D. R. DUNCAN, *President.*

Attest: WM. K. BLAKE,
Secretary & Treasurer.

300 T. H. Counts, being duly sworn, says: I was, in 1877 and 1878, secretary and treasurer of the S., U. & C. R. R.

The account now handed the master, marked No. 18, shows the amount due from the S. & A. R. R. to the S., U. & C. R. R. for work and labor, hire of cars, &c., as set forth in the account.

All proper credits have been given to the S. & A. R. R., and the amount now due is $13,263.13, with interest.

301 W. K. Blake, a witness introduced by W. H. Inman, deposes and says:

I was secretary and treasurer of the Spartansburg and Asheville Railroad Company, am now and have been since August, 1875, and the signature appended to the note now shown is my signature as such secretary, and the seal of said company was thereto attached by me.

Exhibits A & B shown to witness, and he says that they are correct copies of the original minutes.

Note for $40,000, dated July 1st, 1877, payable to W. H. Inman (copy filed, marked No. 2), shown to witness, who says that his official signature is signed to the note shown him, and the seal of the company is thereto attached.

Cross-examined by J. H. MERRIMON, att'y:

Mr. George C. Perrin was assistant engineer S. & A. R. R. Company in August, 1875, and there was a balance due him of $200. On the 1st Oct., 1878, $1,118.57 was due him.

He was allowed $50.00 per month to May, 1876, and from May, 1876, to May, 1878, $65.00 per month; from May, 1878, to Oct., 1878, $100.00 per month.

302 (J. H. Merrimon, Esq., offers transcript of judgment from Henderson county, N. C., marked Exhibit "D."

Objected to, for the reason that the judgment, of which a transcript is filed, was taken against the R. R company after an injunction and the appointment of a receiver in this action, and the suit was instituted also after that injunction.)

H. H. Gramble did work for the S. & A. R. R. amounting to $4,031.94; the final estimate was for Sept., 1877; his work began March, 1877. The company paid him up to August, 1877, $935.30. The first payment was made April 5, 1877, of $200.00, and were made from time to time until August, 1878, amounting to $582.74. The fiscal year of the company ended the 1st August each year.

There was then a balance due of $2,513.90 August 1st, 1878, for construction of road, excavating, cleaning, &c.

In addition to the above amount the company owes him for cross ties delivered by him in June and July, 1877, a balance of $187.25; May 15, 1878, $92.50, also for cross ties delivered in May, 1878.

The company also owes him for engine wood, $8.75.

303 The company owes C. M. Pearson a balance of $92.25, to Oct. 1, 1878, for services as assistant engineer. (Transcript filed and objected to for reasons above stated.)

(Paper shown witness purporting to be an account in favor of M. J. Fagg, admitted to be correct, filed and marked.)

The consideration of this indebtedness was work done in constructing the road from Oct., '74, to March, 1877, inclusive. This work was done under a contract made with E. Clayton & Co. in 1874, on South Carolina division. A considerable part of the work, and the last done, was in North Carolina, about one-half or three-fourths of a mile.

(J. H. Merrimon offers in evidence the contract of E. Clayton in 1874, marked Exhibit "C.") There is a balance due E. Clayton & Co. on contract of 1874, $2,540.19 on the S. C. Division. This was due March, 1877, the date of final estimate.

(J. H. Merrimon, Esq., offers in evidence the contract dated August 16, 1875, with E. Clayton.)

There is due E. Clayton on this contract, Pocolet division, $21,314.96, final estimate Oct., 1877, by chief engineer, beginning Aug. 18, 1875.

Estimates filed, marked 'E."

304 Fry and Deal are due from the Company $6,046.95, for work done; the first estimate was May, 1877, (this amount subject to credit of any payments made by the president.)

(Certified copy of lien filed in Polk county by Fry and Deal, to which is appended a copy of the contract of the S. & A. R. R., offered in evidence.)

Fry and Deal completed their work June 17, 1878. The company owes W. P. Fortune the sum of $1,749.78, of which $533.33 is for work done on S. C. division, and $341.45 on the Green river division, and $875.00 for mules and shanties.

For the amount due him I gave him a due bill on the company July 5th, 1876.

(J. H. Merrimon, Esq., offers in evidence a transcript of judgment from Henderson county, in favor of L. J. Pace. Objected to for reasons above stated.)

Examined by M. E. CARTER, Esq.:

Col. Thad. Coleman was chief engineer of the company from its origanization (May 1st, 1874, to Oct. 1, '78), at a salary of $2,500.00 per year.

There was due him, Oct. 1st, 1878, $3,364.26 on salary, and for sundry disbursements, $327.71, as he reported to me, making
305 an aggregate of $——, which is admitted by the company.

(Transcript of judgment in favor of Thad. Coleman offered in evidence, and objected to for reasons stated above.)

There is due Rice and Coleman $22,935.23, August 1st, 1878, the date of final settlement, for work done on Green river division—Spluda section. The contract was made about June 1st, 1876. Rice and Coleman did their work between Green river and Butt Mountain Gap.

The work continued from June, 1876, to May 1st, 1878, inclusive. I understood that Rice and Coleman did all the work from Green river and Butt Mountain, and includes the section known as the 42nd. (Extract from minutes April 29, 1876, offered in evidence.) My information is based on the official estimates of the engineers. Rice and Coleman did not do the work on the south side of Green river. I heard that Rice and Coleman exchanged that part of their contract south of Green river for the section known as 42nd. (Transcript offered and objected to.)

T. A. Allen's account, filed by J. H. Merrimon, Esq.

Transcript of judgment of Goodson and Davis offered.

306 And thereupon there was an adjournment of the proceedings till the 2ond Oct., at 9 a. m., when the same parties being present the examination of W. K. Blake was resumed by J. H. Merrimon, Esq., and he says:

The amount of private stock paid to Spartanburg and In work	6,400 00
A. R. R. Company was in cash or equivalent	$84,753 71
Total	$91,153 71

The company, to my knowledge, had no other assets, except this and the county bonds and its first mortgage bonds.

Examined by Mr. RION:

I recollect the time of the sale of the county bonds to Mr. Inman, and believe that the price realized was the best that could have been had at that time.

The company made efforts in Charlotte, Charleston, and other places to raise money on the first mortgage bonds, and 50 cents was the best that could be done. I recollect that the president was con-

gratulated by the directors on his action in Charleston. The bonds had no market value for cash.

The legal validity of the county bonds was questioned by some persons in S. C., and their validity is now an unsettled question, and is now in litigation in the supreme court of S. C.

(This evidence objected to, as being hearsay.)

307 It is a matter of public notoriety that the legel validity of all bonds of counties in S. C. is questioned. At the August meeting (1877) of the board of directors, the president made a detailed statement of his operations with 1st mortgage bonds, and the amounts he had succeeded in raising thereupon. He reported what money he had raised in Charleston and from sundry individuals in Spartanburg, and stated further that he thought he had done all that he could, the loans having been made by pledging bonds at 50 per cent. He urged the board to adopt some plan to utilize the bonds so as to enable him to use them and proceed with the road. I cannot remember the details of the president's statement, but I am confident that he referred to the Inman transaction. I believe that he referred to all his hypothecation of bonds.

At the stockholders' meeting, held the same day and place, the president made substantially the same statements he had made to the directors.

The secretary made his report in which he stated the indebtedness of the company for the loans to which the president referred and for which bonds were hypothecated. That last report was in writing. I have it here.

A resolution was adopted at the stockholders' meeting, a copy of which I had. (Page 70 of minutes.)

In pursuance of that resolution the president appointed the committees and reported them to a subsequent meeting of the
308 board. These committees raised no money to my knowledge as treasurer.

After the report of the president and his appeal to the stockholders, he stated that a certain amount was needed to complete the road to Hendersonville ($80,000.00), I think. Propositions were invited. Mr. McAden (R. Y.) said in the meeting that if the whole amount could be raised he would give $10,000, and afterwards raised it to $20,000, he to take bonds at 80 per cent. The proposition was responded to by eight other persons—G. Cannon, $1,000; D. R. Duncan, $2.000; Jno. H. Evans, $1,100; W. K. Blake, $1,000; R. B. Vance, $1,000; M. J. Fagg, $1,000; J. B. Cleaveland, $1,000; Rice and Coleman, $1,000. This proposition was conditional upon the whole amount ($80,000) being raised. All the proposers were interested in the road either as stockholders or contractors. D. R. Duncan was president and a stockholder; Mr. Vance was vice-president and director, and a stockholder. Mr. McAden's proposition was made for S. & U. & C. R. R., of which he was president. That road connects with the S. & A. R. R. Mr. Cannon was a director & stockholder, Evans was director & stockholder, Rice and Coleman were large contractors,

Fagg was a contractor, Cleaveland was a stockholder and a trustee in the mortgage.

The propositions resulted in nothing.

I had no report of any one else subscribing.

Examined by Mr. BYNUM:

An urgent appeal was made to others present, and especially to Mr. E. Clayton, a contractor. I know that the appeal was
309 made to E. Clayton, and he said that his father was not present, but he would consider the proposition.

I was present at the meeting of the stockholders when it was resolved to mortgage the road and issue bonds. Mr. Fagg was present; Mr. W. P. Fortune was not, I think.

I believe that E. Clayton's stock was represented in that meeting.

(Objected to by Mr. Merrimon.)

Rice and Coleman were not stockholders as a firm; my impression is that they were both present at the meeting. Coleman was a stockholder, Rice was not. Cannon and Allen, of Cannon, Allen and Company, were present, both stockholders (Cannon and Allen).

Fry and Deal were not at that time stockholders, and were not present at this meeting.

Thad. Coleman was present.

Perrin, not a stockholder, not present.

10,544 votes at the begin-ing of the meeting. On the vote on the resolution to mortgage the road there were 10,545 votes for and 30 against it. The 30 votes against it were cast by M. E. Carter, a stockholder, for himself and as proxy.

The aggregate of the estimates of the work done by E. Clayton and Company is $120,654.69; of that 20 per cent. was paid in stock. Cash value of the aggregate estimate $96,523.75.

The estimates of work done by them to Oct. 1st, 1876, was $113,555.17, of which 20 per cent. was stock and cash value $90,844.14. There was paid by the company $91,769.47 in cash to them, and
310 all the stock is subject to their order.

M. J. Fagg's estimates to Oct. 1, 1876, was $24,325.20 (cash). The company has paid him $29,573.13.

There is a balance of $2,540.19 due E. Clayton from the company on S. C. Division, under E. Clayton's contract, due prior to Oct. 1, 1876, on Pacolet Division. There was estimated that there was due E. Clayton for work to Oct. 1, 1876, $27,400.13. The company has paid him $35,470.56 to present date.

Rice and Coleman's estimates to Oct. 1, 1876, amounted to $18,286.63. The company has paid them to date, in bonds and cash, $80,383.32.

Cannon, Allen & Company's estimates to Oct. 1st, 1876, amounts to $5,181.59. The company has paid them, in cash and bonds, to date, $19,177.90.

Thad. Coleman's estimates to Oct. 1st, 1876, amounted to $6,041.66. The company has paid him to date, in cash, $7,679.40.

G. C. Perrin's estimates to Oct. 1st, 1876, amounted to $975.00. The company has paid him to date $1,591.43.

T. G. Williamson's estimates to Oct. 1st, 1876, amounted to $2,420.00. The company has paid him to date $3,633.00.

311 The president negotiated (hypothecated) the 1st mortgage bonds and paid the money to me as treasurer, and I paid it out to the contractors. I know that some of the money arising from the hypothecation of the bonds came to my hands, some from Mr. Inman, some from S., U. & C. R. R., and some from individuals in Charleston and Spartanburg, and was disbursed to the creditors of the road, to contractors, engineers, &c. Rice and Coleman were paid in county bonds, except about $985.32 paid in cash or equivalent for freight and shanties.

I was present at a meeting Oct. 15, 1878, of the creditors, when an effort was made to settle with them, called by resolution of stockholders.

(Copy of resolution filed.)

E. Clayton's agent, Rice and Coleman, Allen, Cannon & Company, Fry & Deal, John Garrison, Henry Gramling, Thad. Coleman, M. J. Fagg, P. S. Whisnant, W. H. Inman's agent, The S., U. & C. R. R., The Atlanta R. Mill Company, and all the Charleston creditors were present.

There was a discussion in that meeting upon the subject of the mortgage.

(And thereupon the further examination of Mr. Blake was adjourned to Friday.)

OCT. 4TH, 1879.

The witness recalled and examined by Mr. MERRIMON:

I reported $6,046.95 as due Fry and Deal in last examination. There should be added to that for outside work $232.79, making a total of $6,279.74. The difference between this amount and the claim filed, $6,335.74, is owing to the fact that the company has accepted an order for $56, drawn by Fry and Deal in favor of F. Cantrell.

312 E. Clayton left the S. C. division. The payments to E. Clayton for work done on the Pacolet division to present date were made as follows:

Up to Oct. 1st, 1876, amount paid him $14,862.30.

The gross estimates for E. Clayton for work on Pacolet division were $56,596.48.

(Paper shown witness.) There is also due E. Clayton for work done on S. C. division by their sub-contractors the sum of (due Aug. 1876) $234.95.

(Claim filed, No. 20.)

Payments were made to Cannon, Allen & Company as follows:

Final estimates, Oct., 1877.

Amount paid in Henderson county bonds	$18,450 00
Balance due in bonds	$4,130 29

Cash value ⅓ less, viz., $2,753.53.

For the balance due them ($2,025.83) a company note was given, and 1st mortgage bonds were placed with them as collateral at 50 per cent. in the dollar.

Examined by Mr. BYNUM:

Two (2) contracts with Jno. Garrison. The first work was commenced May 1st, 1877, as appears from estimates. This was for Vaughn creek trestle, which was finished about Sept. 1, 1877. The last estimate for work on this trestle was to and including the last of August, 1877.

The work on Mill creek trestle was finished on the 18 day of February, 1878, as appears from final estimates.

313 On Oct. 16, 1879, the examination of W. K. BLAKE was resumed, and being examined by Mr. BYNUM, he said:

I know that the S. & A. R. R. Company paid none of the coupons of the mortgage bonds except those which fell due July 1st, 1877, on those bonds owned by the S. C. R. R. Company. Those were paid in a settlement made by Mr. Duncan between the S. C. R. R. Company and S. & A. R. R. Company for tickets sold by the former company. These coupons were taken by Mr. Duncan as cash in that settlement, and it was so reported to me as treasurer.

I know that the S. & A. R. R. Company, at no time after the issue of the bonds, had money to pay the interest on the bonded debt, and it was notorious that the coupons were not being paid. Some parties who held notes of the company for borrowed money, and held bonds as collaterals, demanded of me interest due on their debts. I had no money to pay them.

I heard from Mr. Duncan, president, that in July, 1877, the S. C. R. R. Company demanded of the S. & A. R. R. Company the payment of the coupons above spoken of, and payment was not made. I think it was in October that the settlement was made with Mr. Duncan in which the S. C. R. R. Company put their coupons in as cash. I went to Polk county, according to instructions of President Duncan, in September, 1878, to have the mortgage reregistered. I saw Mr. Morriss, the register of that county, and requested

314 him to register it at once, as I was in a hurry to get off. He said that it would take more than that day to do it. I offered to assist him. We had some talk about some plans to hasten the completion of the reregistration, when he said that, inasmuch as the mortgage was already written out on his books, he could change the dates of the registration already made without working injury to any one. I asked him if that would be legal, remarking that I wanted it done properly. He said that he had done that before in similar cases, and by his language produced the impression that he had frequently done so. I then agreed to his doing so; and he then, in my presence, erased the old dates both on the mortgage and on the register's book and inserted the date Sept. 30th, 1878, which was the day on which I had the above conversation with Mr. Morriss, and saw him make the erasure and alterations of the dates.

While I was treasurer of the S. & A. R. R. Co. the income of the road was not sufficient to pay the expenses of operating the road; that is, the section hands, engineers, conductors, &c. I paid out more for the operation of the road than I received from freight and passengers. Spartanburg county bonds, of the class issued to S & A. R. R. Company, are now worth in the market 85 cents. The interest is paid up to date. Union county bonds are worth about same.

315 The bonds which I claim as collateral to secure my own claim are in the actual possession of Maj. Duncan, the president, who told me in Oct. 1878, that he had some bonds still in his hands, and that he would hold $3,000.00 of them as collateral to secure my claim. I left them in his hands, regarding them as my property, and that he was only the custodian of them for me.

As treasurer I kept an account with each contractor, and gave credits on the accounts for all work done, and charged them with all payments on their several contracts. All that the company owed on Oct. 1st, 1876, is paid, except a claim to E. Clayton for about $2,500 for work on S. C. division under the contract of E. Clayton & Company, and a claim of W. P. Fortune, for about $600, $700 under same contract, and to W. P. Fortune, for mules and carts, about $800, if the payments are applied on first credits.

I did so apply the payments, and reported to Co. the balances. There is also a balance due W. J. Fagg, for work done on S. C. division, of about $900, $1,000 prior to Oct. 1st, 1876.

316 R. Y. McAden, a witness introduced by W. H. Inman, being duly sworn, says:

I am acquainted with the handwriting of James Anderson, receiver, and the paper shown me is signed by him, of date May 10, 1879. (Copy of this paper and attached draft filed.)

(The attached draft shown witness, dated May 5th, 1879.) I was authorized by Mr. Anderson to draw this draft for him, and the certificate was given him for the money received on this draft, which money was applied in the construction of the road from Coleman's to Hendersonville by the receiver; the draft was paid by Mr. W. H. Inman.

On Oct. 3, 1879, the examination of R. Y. McAden resumed by Mr. Merrimon:

I ordered the removal of some iron from the S. & A. R. R. to S., U. & C. R. R. I do not now know how much was moved. By the terms of the contract between Jno. H. Inman and S., U. & C. R. R., the title to the iron was to be in him till it was nailed down on S. & A. R. R., and when the creditors refused to accept the terms offered, and began proceedings against S. & A. R. R., he (Inman) told

317 me to take this iron. I did so; put it on S., U. & C. R. R., and on the account between the two company's credit is given S. & A. R. R.; the account will [be] filed. The S. & A. R. R. owes the S. & U. R. R. an amount not secured by any collaterals. I think Alfred Austell was a director of A. R. M. Company at the time of the

purchase of the iron by S. & A. R. R. from that company. I considered him to be a director, and, with Maj. Duncan, urged him to get the A. R. M. Company to accept the contract for the iron. I do not know V. R. Tommy. I think that W. H. Inman had no connection with the A. R. M. Company.

I heard W. H. Inman say that he had the $13,000 bonds spoken of by Maj. Duncan, and intended to hold on to them till all his debt was paid. I heard him say that he had made a good investment by his purchase of the county bonds from S. & A. R. R.; that the bonds had advanced. At the meeting of creditors, Oct. 15, 1878, Jno. H. Inman was present, and professed to be present as representing the interest of W. H. Inman.

318 By BYNUM, att'y:

As president of S., U. & C. R. R., I had connection with Maj. Duncan in his official capacity. The S., U. & C. R. R. first subscribed $10,000 to S. & A. R. R. Company, and paid all in cash. It also brought all freight, iron, supplies, furnished cars, engines, &c., till Jan'y, 1877, taking pay in stock of S. & A. R. R. Company. About Jan'y or Feb'y, 1877, as I recollect, applied to me for aid to carry on his work, saying he had exhausted all his county bonds and other assets, and unless he could get aid by hypothecating bonds with some of the parties interested in the building of the road, he must stop the work. I called together the directors of S., U. & C. R. R. Maj. Duncan came to meeting and made an urgent appeal for help, stating that he had made every effort to raise money on his bonds, and had failed. My directors refused to advance him any money unless he could get some of the money needed from other parties, or buy iron on the credit of his bonds sufficient to reach the
319 foot of the mountain. W. H. Inman, who was present, and said that if S., U. & C. R. R. would lend S. & A. R. R. $25,000 on 1st mortgage bonds at 50 per cent. on the dollar, and if Maj. Duncan could manage, among the friends of the road in Charleston, Spartanburg, and Union to raise money enough on said terms to continue the work on the road, and get iron to foot of mountains, he would lend $20,000 or $25,000 to the company on same terms, provided Maj. Duncan would call on him for his loan last. On these terms my directors agreed to loan S. & A. R. R. Company $25,000, and Maj. Duncan was instructed to draw on me for that amount, which he did, and also for balance of account on that sum.

A few days after this, and before Maj. Duncan drew any money, he wrote me that he had succeeded in raising money in Charleston, and had made contract with A. R. M. Company for iron. Under this arrangement the work was continued and the iron laid to Tryon City. In Jan'y, 1878, I think, Maj. Duncan asked me to call together directors of S., U. & C. R. R. I did so; he was present, and stated that all his means, raised under the former arrangement, had
320 been exhausted, and unless the parties directly interested in the connections of the road would help him, the work must stop. My directors refused to do anything, except to advance him $4,000 to pay for convicts and pay some pressing claims, until he

could visit Charleston, New York, and other places and see if he could not raise money otherwise. He failed at Charleston. I went to New York with him. We tried all the iron men we knew there and some capitalists, and he could not get any money or iron on his bonds. At his request, I called my board together to see what could be done. The result of that meeting was the negotiation of the $70,000 loan already detailed by Maj. Duncan. All of my transactions with Maj. Duncan, president, were open, liberal, and fair, and the terms more liberal than he could get from others.

Maj. Duncan seemed in all his dealings with me and with others, of which I was cognizant, to be endeavoring to do the best for his company, and in the contracts for the hypothecation of the bonds he was careful to exact the longest time in order that he might have the better chance to redeem the bonds. My impression is that
321 he did the best he could under the circumstances, as the circumstances were of unprecedented financial trouble in the country; that it was impossible to negotiate any of the securities of unfinished railroads, except to parties directly or indirectly interested in the finishing of the road. That during this time the building of nearly every road in the U. S. was suspended. I had nothing to do directly or indirectly with Maj. Duncan's disposition of the county bonds.

I was a director of the S. & A. R. R. for one day, at the organization of the company, when I resigned, and was never afterwards an officer of the company, and never attended any directors' meetings of that road. I took an interest in the S. & A. R. R., because I was president of and interested in the S., U. & C. R. R., and considered it important for the interests of my company that the S. & A. R. R. should be completed.

By Mr. MERRIMON:

I knew that Maj. Duncan had no means to redeem his bonds except by effecting a sale of bonds. A fair price for these bonds would be 80 per cent. if the road was completed to Asheville. I
322 think the road, if completed, would pay the interest on the mortgage bonds. The bonds on the completed road would be better worth 80 per cent. than they are now worth 50 per cent, as the road now stands. I knew that the company could not raise money enough to complete the road to Asheville by pledging bonds at 50 per cent., and in fact it did not raise money enough to build it to Hendersonville, but could have done so if all the bonds had been pledged at that rate. I knew at the time of the $70,000 loan that W. H. Inman held $213,000.00 of the bonds, and protested against his having so many bonds for his loan. Maj. Duncan said W. H. Inman held $100,000 for $40,000, and $100,000 more for about $20,000; that Inman was expected to advance more, but would not do so.

Maj. Duncan and I tried to raise money to pay Inman off, and take up the bonds from him but failed.

I knew of the hypothecation of bonds in Cleveland and in Spartanburg. I knew that when the $70,000 loan was effected no other

bonds were left except what was left with Maj. Duncan to purchase iron with—about $82,000. The purpose was to get the road
323 across the mountains to Hendersonville, and the hope was that the bonds could be sold at fair prices or more money raised on them. I was assured that for $65,000 the road could be finished to Hendersonvile, and the amount was made $70,000 to be sure of its completion to that point. I think that I then knew that Maj. Duncan had hypothecated the county bonds at 50 per cent., and that the contractors in Henderson and Buncombe counties were taking the bonds of those counties from the company at 65 per cent.

By Mr. BYNUM:

The cost of completing the road as far as it went was much greater than was supposed at the date of the mortgage. It has required the $70,000 and also $35,000 to bring it to Hendersonville. It was estimated that the Buncombe county bonds would pay for the grading in that county, but it is short $13,000 to $15,000, and that the county subscription of Henderson county would pay for the grading in that county south of Hendersonville. It is short about $27,000.

324 By Mr. MERRIMON:

W. H. Inman was reported to be a man of considerable wealth in the city of New York, and is well acquainted with the money market there, and had considerable influence in the cotton market. I think he is worth $500,000 to $1,000,000.

By Mr. BYNUM:

I knew the Caruth land. Before railroad was built north about $1.00 per acre. The tract was damaged not at all, but on [the] contrary has been benefitted.

On Oct. 17, 1879, the examination of R. Y. MCADEN was resumed, and being examined by Mr. BYNUM he said:

J. H. Inman agreed in New York to loan the $70,000, provided the notes were properly fixed up by authority of the board of directers of S., U. & C R. R. The said board was called together at Spartanburg. J. H. Inman came to that meeting in order to see proper resolutions passed by that board authorizing the transaction.

325 & 326 Inman agreed to loan the money provided it was made a New York contract, and the notes made payable in New York. He refused to receive the notes in Spartanburg or lend the money there. He required both Maj. Duncan and myself to go to New York and then deliver the notes in his office there, and I there received the money from him.

327 R. Y. MCADEN, witness for the plaintiff, being sworn, says:

The statement of Mr. Morris, that I asked him to alter the records of his office as register of deeds, the date of the registration of the mortgage, is not true; that last November, during the term of Polk court, I went to Mr. Morris' office for the purpose of examining the

record of the mortgage of the S. & A. R. R.; he gave me his registration books, and pointed me to the registration of the certificate of Sept. 30, 1878; on examining that certificate I asked him for the mortgage; he showed me where the mortgage had originally been registered in December, 1877; at the bottom of the page was the certificate of registration, originally December, 1877, which had been scratched out, and Sept., 1878, inserted; I with indignation asked Mr. Morris what this meant, and why he had altered the records of his office; his reply was, that Mr. Blake brought the mortgage there for registration, and that Mr. Blake was in a hurry to return on that evening's train, and that they thought that this scratching out of December, 1877, on the old registration, and inserting Sept. 30, 1877, the date of the new registration, together with the registration of the new certificate, answered every purpose, and he said to me: Will not that do? I replied: It may do, but it is a devil of a way of doing business. I immediately went from his office to the hotel,
328 and told Judge Bynum, my attorney, of the scratching of this record, and Judge Bynum immediately went over to see if it was true. In consequence of this scratching of the record, Judge Bynum and myself went to Spartanburg, and I went to Mr. John B. Cleveland, one of the trustees, and procured from him the original mortgage, and on that original mortgage I saw that the date of probate in Polk county had been scratched out, in Mr. Morris' handwriting the words December, 1877, having been scratched out, and the words September, 1878, inserted; and Mr. John B. Cleveland, the trustee, was notified by Judge Bynum and myself to go or send some responsible party to Polk county to see that the mortgage was re-registered, and for the party to superintend the registration to see that it was registered right.

R. Y. McADEN.

329 JAMES MORRIS, witness for the defendant, being sworn says:

Question. State whether at any time you have been the register of deeds for Polk county, and when.

Answer. I was register from May, 1875, to December, 1878. I registered a paper purporting to be a mortgage made by the Spartanburg and Ash-ville Railroad Company to W. H. Inman and John B. Cleveland as trustees. I first copied it upon the register's books of Polk county, in Dec'r, 1877. I made a certificate of the December registration upon the back of the mortgage after the registration, showing the date of the registration and referring to book 5, pages 55–6, 7, 8, 9, 60, 61, 62, 63, 64, 65, 67, as the places in said book where the registration was made. My first registration was made upon the certificate of George W. Nichols, commissioner of deeds for North Carolina within the State of South Carolina; said certificate of probate bears date Nov. 30, 1877. There were no other certificates of probate for North Carolina upon the deed at that time.

On the 30th day of Sept., 1878, Mr. Blake, secretary and treas-
330 urer of the Spartanburg and Ash-ville Railroad Company, handed me the mortgage, saying that he wanted [it] reregistered.

My impression is that he said that he thought that this certificate of probate dated the 28th day of September, 1878, by Nichols, might be re-registered without re-registering the entire mortgage. I registered the new certificate of probate on my book on the 30th day of September, 1878, but did not register the mortgage at that time. I did not do anything more at that time, but in November following Mr. McAden was in Columbus, and requested me to show him the deed books in which the mortgage was registered; he then examined the dates of the certificates of registration and saw that they did not correspond, and I believe that he remarked to me that it was a singular mode of doing business; when I told him that what I did was done under Mr. Blake's instructions, then I believe that Mr. McAden told me that he wanted me to change the date of the first registration, when I told him I would do it, but would not antedate the date of the registration of Dec., 1877, when he said that he did not wish me to do it, but wanted it
331 changed so as to correspond with the date of the certificate of Sept. 30, 1878; I made the change by taking my pocket-knife and erasing the date of Dec'r, 1877, and made it Sept. 30, 1878. I did nothing else at that time. At the time that I registered the certificate of the 30th day of Sept., 1878, I scratched out on the mortgage Dec'r, 1877, with my pen-knife, and inserted Sept. 30, 1878; I scratched out the date of my first certificate, entered on the back of the mortgage, and inserted the 30th day of Sept., 1878. I did not make the same changes upon the registration books at that time, but did make it afterwards, as I have already stated. On the 22nd day of Nov., 1878, I re-registered the mortgage at the instance of Mr. John L. Brown, who had possession of the mortgage. I have registered the mortgage except in Dec'r, 1877, and in Nov., 1878. There were no other certificates of probate before me except those which appear upon the mortgage itself. When Mr. Blake came to see me to get the certificate of September 28, 1878, registered, he paid me fifty cents for registering the certificate; the fee for registering the
332 entire mortgage was four dollars and ninety cents; he saw me register the certificate; I then handed him the mortgage and he took it away; the mortgage was never after that time in the office of the register of deeds of Polk county until Nov., 1878; the fee of four dollars and ninety cents was paid me by Col. Coleman, chief engineer; I registered one deed which comes between the registration of the mortgage of Nov. 1877, and the registration of the certificate of the 28th Sept., 1878, on the register book; that deed was from James M. Roe to Franklin L. Taylor, and had no connection with the mortgage; when Col. Coleman paid me the fee, I gave him a receipt, and I think he said he wanted some showing to the company.

Cross-examined:

I am a lawyer, and knew that it was wrong to alter a record; I am register of deeds, and knew that it was wrong, as a register of deeds, to alter the records. Mr. McAden was a lawyer, and I did not think that he would ask me to do anything that was not right

in the premises; I supposed him to be an honorable gentle-
333 man; he was a man older than myself, and of more expe-
rience; I knew that it was wrong, but for the understanding which I had with Blake, that it was to be taken as one entire transaction, and the entire registrantion was to date of the 30th of September, 1878; I don't know that it was wrong to change the date of the registration upon the books, so as to make it correspond with the changed date of the certificate of registration on the mortgage; I offered to re-register the mortgage if Mr. Blake desired it, and he said that he did not; I changed it on the register books at the suggestion of Mr. McAden; there is nothing that I am more positive of than that. I certify on my books that the deed and certificate were presented in my office for registration Sept. 30, 1878, and duly registered in book No. 5, and then refer to the pages of the book by number in his certificate, on which it was registered that certificate is not true, that the date of the registration of the mortgage of December, 1877, was to correspond, I suppose, with the changed certificate which I had made at the direction of Mr. Blake, and I neglected to make the change in my registration books for some cause. I am attorney for some of the defendants who are contesting the mortgage.

334 Re-examined by defendant:

I became attorney for some of the defendats in the summer, 1875. The mortgage had not been in my office from the time when I resistered it in Sept., 1877, until it was brought to me by Mr. Blake in Sept., 1878. I had no understanding with any one that the registration of Dec'r, 1877, and the registration of the certificate in Sept., 1878, was to be considered one registration except with Mr. Blake, and this understanding I never had until Sept., 1878. The deed from James M. Roe to Franklin L. Taylor before referred to was registered in book 5 on the 13th day of December, 1877, and was registered (after the mortgage, and was registered) before the certificate of the 28 Sept., 1878. I was requested to make the change by the parties holding the mortgage and did not think it wrong. I did not think any injury could result to the creditors by that change of the registration and did not know that I was doing any wrong to the beneficiaries under the mortgage. When I stated that it was wrong to change the record I did not mean that I thought it wrong to make the change at the instance of the parties interested. I made the change as an accommodation to the parties. I offered to register at the same time the whole of it. In making the change I relied upon
parties who I thought would not mislead me. I had the
335 utmost confidence in Mr. Blake. The registration of this
mortgage ends on page 65 of book 5; that the deed from James M. Roe to Franklin L. Taylor is registered on page 66 of same book; the certificate of 28 of September, 1878, on the mortgage, is registered on page 67 on the same book.

JAMES MORRIS.

336 G. W. CLAYTON, being duly sworn, says:

E. Clayton, M. J. Fagg and, and W. P. Fortune were the firm of E. Clayton & Company. I am a son of E. Clayton. I was his agent from June, 1875, to this time to collect for him all money due him from S. & A. R. R. and to disburse that money. As such agent I became acquainted with the financial condition of that company in Jan'y, 1878, at the time of a meeting of the directors of S., U. & C. R. R. Prior to that time I had heard from Col. Coleman, engineer, that the bonds of Spartanburg and Union counties had been used to some extent in purchasing the first iron for the road, and his understanding was that these bonds were to be replaced by mortgage bonds when issued, and were in the hands of W. H. Inman. I knew nothing but this about the finances to Jan'y, 1878. In 1877 I asked Maj. Duncan if he had any control of the county bonds and he told me that they were beyond his control. I do not think my father had any information about the county bonds. He left the work in spring of 1877. In Jan'y, 1878, I learned something about the disposition of the mortgage bonds. He said to me that he had no bonds that were signed, that all that he had had were out. I think he then told me the amount of bonds held by various parties, making a considerable number. I told him that I thought he had left the contractors unprotected, and he stated that with what
337 bonds were not yet signed and what he could control, he would be able to control the road, and I also understood from him that W. H. Inman had declined to sign any more bonds as trustee. I protested then, in the name of my father and for him, against his letting any more of the 1st mortgage bonds go until the contractors were paid. I think I have stated all that I know about the financial condition of the S. & A. R. R. Company.

The work done by E. Clayton was grading, with his own means. It was heavy work, and he borrowed money at high rates to carry on the work.

I heard a talk between W. H. Inman & Alfred Austell at Spartanburg in Jan'y, 1878. I heard it.

(Objected to by Mr. Bynum, att'y.)

I occupied a room in the Palmetto House in Spartanburg adjoining a room occupied by Inman and Austell; there was an open transom over the door between the two rooms. I knew them by their voices and their calling the names of each other, and I ascertained the next day that they had occupied that room. Mr. W. H. Inman made a proposition to Gen'l Austell, in which he divided the S., U. & C. R. R. into eight shares, and that each representative should subscribe equally for a fund amounting to $50,000, for the purpose of taking up the balance of the bonds of S. & A. R. R. and completing the road as far as that amount would carry it, and then foreclose the mortgage and buy the road. He stated that the completed road with a Tenn. connection would be the best paying road in
338 the South; that he knew the East Tenn. country, having lived there. Gen'l Austell said he (A.) did not have the means.

W. H. Inman stated that it was the last proposition he would ever make in regard to the S. & A. R. R., if it was not accepted. Gen'l Austell said he was not able to go on, and spoke of some losses. My hearing this was purely accidental.

I was in bed when I first discovered that they were in the next room. W. H. Inman grew impatient, and stated that he was independent, as he held bonds enough to protect him from all he had in the road, and that, further, that he had had an offer on his county bonds that would pay or more than pay all he had in the road.

Next day I told Maj. Duncan of this conversation, and that I had heard it.

Maj. Duncan told me same day that a proposition had been made to him, which he had declined.

Col. Cannon told me that Maj. Duncan withdrew from the meeting. Maj. Duncan told me I need have no fear of any such proposition being accepted by him.

I knew of the existence of the mortgage when I was doing the work.

339 OCT. 4, 1879.

The hearing was resumed according to adjournment.

(And the examination of G. W. Clayton was resumed by Mr. Merrimon, and a deed from Perry Caruth to E. Clayton for the Caruth land, his interest ($\frac{1}{2}$) in part of the land and all of their part, put in evidence and proved to cover the land; also will of Ephraim Caruth, a certified copy, filed.)

E. Clayton, by me as agent, purchased this land, under advice of counsel, to protect us in the work we had done on this land, and for which [we] had not been paid.

I had no purpose to speculate on the bondholders of the R. R., or any one else. I had not demanded or desired any greater sum than is due for the work. The S. & A. R. R. Company was in possession of right of way on this land when I purchased it, and the road was running over it. E. Clayton has begun a suit in Polk county to eject S. & A. R. R. Co. from this "right of way." It was brought before the commencement of this suit (Tommy & others *vs.* S. & A. R. R. *et als.*), and also had brought before an action for recovery of his debt before this suit was begun.

By Mr. BYNUM:

I gave $2,500 for the land. It was bought after he had completed the grading on this land under a contract with the company.

340 (And thereupon it was agreed by the parties that on Tuesday, the 14th day of October, at 9 a. m., at Hendersonville, N. C., before Wm. W. Jones, Esq., the parties may take the depositions of any witnesses brought before him by the parties, or any of them, without further notice; and the parties agree that the depositions so taken shall be evidence before the master, if filed with him on or before the 16th inst.)

341 R. L. COLEMAN, being duly sworn, says:

By Mr. CARTER:

I am one of the firm of Rice and Coleman, and was not at the meeting at Hendersonville when the mortgage of S. & A. R. R. was authorized by stockholders. I was a stockholder, ($500.00.) Rice owned none nor did the firm. I really did not know that the mortgage bonds were so near exhausted till the time of the $70,000 loan, or about that time, I think.

Two miles of S. & A. R. R. was on our own land, and was graded by Rice and Coleman. The company never obtained the right of way over that land, to my knowledge. We bought the land after we began work on our contract as an investment only. We bought about 700 acres, at about $1,000.00. The deeds for this land and the contracts will show, I think, what we paid for it. A small tract has not been surveyed—about fifty acres; $2.00 per acre for that. We paid a part—$20.00, I think. We paid for the McMinn tract upwards of $600.00; for the main tract $600.00, about. The land is worth more than we paid for it.

By Mr. BYNUM:

We had done work on a portion of this land under our contract before we bought it, and a line had been located through a part of this land prior to our purchase of it. We bought the land
342 because we thought that we might as well buy the McMinn land, as we were renting it, or a part of it. We made this investment because of the location of the R. R. Under our contract we graded a place for a depot on the McMinn place. We did not object to the roads being built on the land after it became ours, and never claimed any damages for right of way; that is, we have never sued for it.

Q. What damages have been sustained by reason of the road's being located on your land?

Answer. I can't say that the land is worth less than it was prior to that. We have sustained no damage by the location of the road, so far as the value of the property is concerned. We would not claim any damages if the company would pay what they owe us.

Objected.

The reason why we demand damages is that the company has not paid us our claim.

I knew of the existence of the mortgage when we began to work after the Henderson county bonds were exhausted.

By Mr. CARTER:

I expected to be paid for our work.

After the R. R. Company stopped paying us we were advised that we had a right to claim the road-bed on our land, and all the superstructure, and hence put in no claim for the right of way. We considered that the R. R. had no right till we were paid. This
343 claim of the road bed was not set up till the company failed

to pay us. Our work was grading and culvert work. We were contractors, and superintended the work.

(Mess. Carter & Coleman filed deed for land, and then there was an adjournment till 9 a. m., Oct. 4, 1879.)

344 J. A. DEAL was introduced by Mr. Merrimon, att'y, and, being duly sworn, says:

I am one of the firm of Fry and Deal, and have filed my claim. Fry and Deal built trestles No. 9, 10, 11, & 12 on S. & A. R. R. The work was worth what we charged the company for it, and in fact was low, lower than I had ever known such work to be done at. After this work I took another contract for similar work at higher figures. This was let to lowest bidder, and we got it. We took the first contract at the engineer's own figures. I knew the mortgage was on the road when I did the work and before I commenced it. That was the source from which we expected to get our money in payment for what we did.

At the time of the second contract (for which we have been paid in full) I knew that the $70,000 loan had been effected and the conditions of it. I did not know then that the company had no means left out of which we could get payment for our first work. I knew the company was hard pressed, but was not acquainted with the finances of the company. I had confidence in Maj. Duncan's ability to get our money for us.

These trestles (Nos. 9, 10, 11, & 12) are now used by the road, and added to the value of the property the amount of their cost.

We did the work and furnished the material out of our own means. Mr. McAden (R. Y.) was on the road occasionally, and knew we were doing the work. I am a stockholder of S. &
345 A. R. R. Had no stock when the mortgage was executed. Mr. Fry is a mechanic and superintended the *the* work. We paid off the hands out of our own funds, except what we now owe them.

By Mr. BYNUM:

I am not a mechanic; was only the contractor.

346 The hearing of the above case before the special master was resumed on Oct. 16th, 1879, at 12 m., when—

W. J. Montgomery, Esq., att'y for John Garrison, offered in evidence—

1st. Transcript of an action now pending in the superior court of Polk county, in favor of Jno. Garrison and against the S. & A. R. R. Company, to enforce his mechanic's lien.

Transcript filed and marked Exhibit ———.

2. A certified copy of the lien filed by Jno. Garrison in Polk county against the S. & A. R. R. Company.

Copy filed and marked Exhibit ———.

And then JNO. GARRISON, testifying in his own behalf, being duly sworn, says:

I think I began work on the Vaughn Creek trestle about Dec'r 15, 1876; got out some rock, &c. I sawed some timber for that trestle in Dec'r. I did not use the rock I got out, but Mr. Whisnant did. I sublet the framing, raising, and rock-work to P. S. Whisnant & Sons. I furnished the timber at the trestle. I completed this trestle in July, 1877, except, perhaps, a little bracing, which was finished in Aug., 1877.

The company accepted this trestle, and the whole amount of this work was $5,706.65. I gave Whistnant an order for about $1,800.00 on the company in payment for what I owed them for this work as sub-contractors, which order they took and released me from all liability to them. The company owes me a balance for work on the Vaughn creek trestle, $357.51, which was due me Aug. 4,
347 1877 (final estimate filed). I made contract for building Mill creek trestle in June 2, 1877; began to get timber in July, and about the middle or last of June, 1877, I dug out the foundation and began to build two walls at the creek.

(Paper shown witness and he says that it is the final estimate of work done by him on Mill Creek trestle, signed by the chief engineer of the company and handed to the witness by said engineer.)

Filed as exhibit.

I completed this work on Mill Creek trestle on Feb'ry the 1st, 1878; it was accepted by the company. The amount due me is $2,906.30, subject to a credit for use of convicts furnished by the company if any is allowed. The credit, 237 days' labor of one convict.

The president wanted me to finish the work quickly, and told me if I would take the convicts and work them he would let me have them for about their board. I did not board them.

(It was then agreed that the company should have a credit of $71.00 for these convicts.) I finished the Mill Creek trestle so that trains could cross on February 1st, 1878, and they did cross. Afterwards, two or three days before the final estimate, I finished the bracing of the trestle according to directions of the chief engi-
348 neer. The contract was that I should brace the trestle as he directed. I was present at the meeting of the stockholders of 1876, when the mortgage was authorized, and knew that such authority had been given the board of directors. I knew nothing of the execution of the mortgage, but heard that the president was trying to make some arrangements about the bonds before I made the Mill Creek contract. It was a general rumor that I heard. I heard that the mortgage had been made in some way. I was not a stockholder till 1878.

Cross-examined by Mr. BYNUM:

When the Mill Creek trestle was nearly finished, the president offered to give me bonds in payment for my work; he did not say what sort of bonds. I declined to take them. I am a mechanic, and gave this work my supervision. I furnished the timber, and worked some myself. I had about twenty hands. I leveled some,

lifted some, and had several mechanics working under me, who followed my directions.

349 Examined by Mr. MONTGOMERY:

I gave instructions and had good mechanics to assist me in building the Mill Creek trestle. I was the "boss" of the work. When I said that I finished the Mill Creek trestle on Feb'y 1st, I meant that I finished it in the first part of said month. I can't say on what exact day it was finished, but I think it was about the 10th or 12th that the train could cross, and did cross it. After this I did the bracing spoken of by me. This was about the 17th of Feb'ry, 1878. These trestles are both in Polk county.

350 GEORGIA, *Fulton Co.:*

I herby certify that at the time and place named in the agreement hereto attached, I sat as a commissioner under said agreement for the purpose of taking testimony, and that complainants were represented throughout the entire time by W. S. Thompson, Esq., attorney-at-law, and J. H. Merrimon, att'y for respondents, by W. F. Newman, att'y-at-law. V. R. Tommy and T. W. Chandler were each duly sworn, and the result of their examination appears in full attached to their certificate. The original note, of which Exhibit A is a true and correct copy, was introduced before me; so also were the bonds mentioned in the face of the note given to secure the payment of the same, and were found to be as therein described, with the exception of the fact that one coupon had been clipped from each of said bonds. Eight other notes wese introduced before me, each of which were exactly similar to Exhibit A, except as to dates, times due, amounts, and bonds mentioned therein, given to secure the same.

One	dated	May	7, 1877,	due	18	mos. from	date, for	$4,000 00
"	"	"			12	" "	"	"
"	"	"			24	" "	"	"

351 Then these notes each recited on their face that bonds were given as collateral security to secure the same. The first that bonds 135, 136, 137, 138, 139, 140, 141, & 142, were given to secure it. The second that bonds 143, 144, 145, 146, 147, 148, 149, & 150 were given to secure it. The third that bonds 127, 128, 129, 130, 131, 132, 133, & 134 were given to secure it.

One dated June 1st,	1877,	due	12	mos. from date, for	$3,000 00
Do.			18	do.	3,000 00
Do.			24	do.	3,000 00

Each of these three notes stated that six first-mortgage bonds had been given to secure it, but did not give the numbers of the bonds, said bonds being for the amount of one thousand dollars each.

One dated Sept. 1st,	1877,	due	18	mos. from date, for	$2,500 00
Do.			24	do.	

These two notes each written on their face that bonds were given to secure them.

The first that bonds 198 & 199 of $1,000 each, and 101, 102, 103, 104, 105, & 106, of $500.00.

The second that bonds 107, 108, 109, 110, 111, 112, 113, 114, 115, & 116, of $500.00, were given to secure it.

All of said bonds, before mentioned, as alluded to in the notes, were also introduced and identified. Exhibit F contains a separate statement of them, giving both their number and value.

352 One coupon is clipped from Nos. 127 to 134 inclusive.
Do. 107 to 116 do.
Do. 193 to 197 do.
Do. 135 to 160 do.
Do. 161 to 178 do.
Do. 101 to 106 do.
Do. 198 to 199 do.

Two coupone are clipped from Nos. 359 to 360 inclusive.
Do. 342 to 346 do.
Do. 385 to 386 do.
Do. 347 to 356 do.
Do. 382 to 384 do.

Three coupons are clipped from Nos. 367 to 381 do.
Do. 387 to 392 do.
One coupon is clipped from Nos. 393 to 395 do.

The balance of the bonds had all the original coupons attached.

The minutes of the meetings of the directors of The Atlanta Rolling Mill Company were introduced, and Exhibits B, D, & E are true copies of the portions of the minutes introduced.

A general statement, prepared by T. W. Chandler, is used for Exhibits A, B, C, & F. After and before each of these exhibits are remarks by T. W. Chandler, which are not parts of the exhibits, and which have been surrounded by brackets. The original notes and bonds have been returned to holders, for, on account of their value, it would not be safe to attach them to the evidence.

Oct. 30th, 1879. HOKE SMITH, *Commissioner.*

353 Questions to be propounded to V. R. Tommy, T. W. Chandler, *et al.*, witnesses for pl't'ffs, by the att'ys for plaintiffs, testimony to be taken at the office of Hoke Smith, in Atlanta, Georgia, before said Hoke Smith, as commissioner, by consent and agreement of counsel for plaintiffs & def'ts, to be used by A. Burwell, special master, in taking the account and according to the reference ordered in the case pending in *in* the circuit court of the U. S. for the western district of N. C., at Charlotte, N. C., "V. R. Tommy & The Atlanta Rolling Mill Company *vs.* The Spartanburg and Ash-ville Railroad Company *et als,*" said depositions to be taken on 29th Oct., 1877.

W. P. BYNUM,
Att'y for Plaintiffs.

Oct. 18, 1879. J. H. MERRIMON.

It is agreed that W. S. Thomson, Esq., & Robert Clayton may insert name of commissioner and place for taking testimony.

We agree on Hoke Smith, Esq., of Atlanta, Ga., as commissioner and his office as the place of taking depositions, this Oct. 29, 1879.

WM. S. THOMSON,
Counsel for Plaintiffs.
R. M. CLAYTON,
Agent for Contractors.

354 1st. Give your age, residence, and occupation, & state whether you are the complainant mentioned in the said case; *or*- you or not the holder and owner of any of the first mortgage bonds of the Spartanburg and Ash-ville Railroad Company; if so, when and how you became such owner [or] holder, and what bonds they are and what coupons are attached to them and unpaid, and whether the payment of the *payment of the* Jan'y and July, 1878, coupons has been demanded; and if not, why?

2. Are you not connected with the Atlanta Rolling Mill Company; if so, in what capacity and for what length of time?

3. Relate all you know in reference to the sale, purchase, and ownership of said bonds not answered in your reply to the foregoing interrogations; also state and exhibit in writing the account between the rolling mill company and the S. & A. Railroad Company for iron sold and the balance due the rolling mill company.

355 1. Did you give anything for the bonds of the S. & A. R. R. Co. mentioned in your complaint as purchased by you; if so, what?

2. How and in what was it agreed to be paid?

3. How was it paid and in what manner?

4. When was it paid?

5. For what purpose did you acquire the bonds; as an investment merely?

6. At whose suggestion did you acquire them?

7. Did the person or persons who made such suggestion give any reason for it? State all that passed or was said then or at any time between you and such person or persons on that subject of the three last of the foregoing inter-ogations, or either or any of them.

8. Have you any real interest in this suit?

9. In the event of failure, has any person or corporation agreed to pay your costs of suit, or otherwise, in any event, to indemnify you against costs or expenses of this suit; if so, who?

10. If any person or corporation has promised or contracted to indemnify you as mentioned in the last foregoing inter-ogatory made, and what reasons were alleged or mentioned?

11. Was —— Austell a director or officer or in anywise interested in the Atlanta Rolling Mill Company, or (date of mortgage) *or* at any other time; if so, during what periods, and in what capacity or manner?

356 Cross-interrogatories to be propounded to Mr. Tommy, submitted by J. H. Merrimon, counsel for E. Clayton and other defendants:

1st. Were you not advised before the meeting of the creditors of the S. & A. R. R. Co., at Spartanburg, S. C., on the 15th Oct., 1878, what proposition for a settlement would be made there; and was it not the pupose of the Atlanta Rolling Mill Company to furnish the iron and take the first mortgage bonds of the company at par if the proposition had been accepted by all the creditors?

2. In your sales of iron to the S. & A. R. R. Company did you not charge more for the iron than your usual selling price? Would you not, for cash, have delivered the iron at Spartanburg for much less than $45.00 per ton?

3. Was not the reason why you or your company (Atlanta Rolling Mill Company) did not present the coupons of January, 1878, for payment because there was nothing due you from the S. & A. R. R. Company at the time, either of principal or interest?

4. Was not your company, at the time you were furnishing
357 the iron, fully apprised of the condition of the S. & A. R. R. Co. financially? Did you not know the road was being built simply by its bonds?

5. Has W. H. Inman any interest in the Atlanta Rolling Mill Company, either individually or as a member of any corporation or partnership?

6. Have any corporations, banks, or other corporations in Atlanta or elsewhere any interest in the Atlanta Rolling Mill Company? If [so], state what corporations, and what interest; and state whether any members of the Atlanta Rolling Mill Company, or members of, or interested in, the corporation holding — such interest.

7. Was not the last lot of iron purchased by you for the S. & A. R. R. Co. delivered to the Spartanburg, Union and Columbia R. R. Co.? And was not a portion of it used by the last named company with your, or your company's, assent?

8. Was the purchase made by you of the five bonds you claim a private transaction? Please exhibit the bonds you claim to own.

9. State Gen'l Alfred Austell's connection with the Atlanta Rolling Mill Company, and whether it was not through him the sale of iron was made to the S. & A. R. R. Co.

10. What rate of interest was allowed by the laws of Georgia at the time of your company's contract with the S. & A. R. R. Company?

358 STATE OF GEORGIA, *Fulton County.*

In pursuance of an agreement entered into between the parties, I have this day caused V. R. Tommy and T. W. Chandler to appear before me and have propounded to them the questions, direct and cross, hereto attached, to be used in the case of V. R. Tommy and the Atlanta Rolling Mill Company *vs.* The Spartanburg and Asheville R. R. Company *et als.*, pending in the U. S. circuit [court] for the western district of N. C., held at Charlotte, N. C.

V. R. Tommy, to the 1st int'y, answers: I reside at Decatur, Ga., but am engaged in merchandising in Atlanta. I am one of the complainants mentioned in said cause and am sixty-seven years old, I am the holder and owner of five of the first mortgage bonds of the S. & A. R. R. Co.; they are numbers 193, 194, 195, 196, and 197, of one thousand dollars each. I became the owner of the above-named bonds on the 18th day of Oct., 1878, by purchase from the Atlanta Rolling Mill Company. There are thirty-nine coupons of thirty-five dollars each attached to each of the bonds, payable semi-annually, in Jan'y & July of each year, the first of which fell due Jan'y 1st, 1878; the last will be due Jan'y 1st, 1897. Payment of the Jan'y & July, 1878, c-upon has not been demanded that I know
359 of. These coupons were *passed* due and attached to the bonds when I became the owner of them. The bonds were deposited with the Atlanta Rolling Mill Company as collaterals to secure the payment of a note which I have exhibited to the master. Exhibit A contains the note referred to, or, rather, an exact copy of the note, and it is to be found on page 2 of the general exhibit, and a copy of which I attached to my depositions dated Sept. 1st, 1877, and due 12 months after date, for twenty-five hundred dollars; and until the note became due neither the Rolling Mill or myself had any right to demand payment of the said coupons. When the note fell due in Sept., 1878, demand was made for the payment of the note and payment was refused. I learned then for the first time that the S. & A. R. R. was insolvent, and it would therefore be useless to demand payment of the coupons.

To the 2nd interrog. he answers: I am president of the Atlanta Rolling Mill Company, and have been president of the same since March, 1878.

To the 3rd interrog. he answers: In addition to the fact already stated as to my ownership of the said bonds, I will state that
360 the Georgia B'k & Trust Co., of which I am president, had on the 11th day of April, 1878, loaned the Atlanta Rolling Mill Co. $2,000, and taken the Atlanta Rolling Mill Co.'s note for $2,000, and had taken the note and bonds above referred to as collateral security. When payment of the note of the S. & A. R. R. Co. was refused the Rolling Mill Company could not pay the note, and the R. R. Co. would not pay its note, so I assumed the payment of the Rolling Mill Company's note to the bank to satisfy the bank directors, who were not willing to credit the Rolling Mill Company.

At a meeting of the board of directors of the Rolling Mill Company, held on the 18th day of Oct., 1678, I brought the matter before the directors, who took certain action, which will appear by the minutes. In addition to the resolution placed upon the minutes of the meeting, the amount for which the bonds were to be sold was discussed, and it was agreed that they should be sold if 25 cents on the dollar could be obtained. As no one would allow me that amount for the bonds, I took them at that price myself. I paid 25 cents on the dollar of the principal; that is to say, $1,250 for the bonds.

(Counsel present representing Mr. J. H. Merrimon objected to the

foregoing answer, but the answer was taken down, and the minutes of the meeting of the directors of the Rolling Mill Company were presented to the special commissioner, and a copy of the resolution is hereto attached, certified as such and marked Exhibit "B." See page three, general exhibit.)

361 Mr. Chandler, our book-keeper, has prepared a statement of the acct. due from the S. & A. R. R. to the Atlanta Rolling Mill Company, which I believe to be correct, and herewith submit as a part of my answer:

(Exhibit C was then presented to the special commissioner and is hereto attached and certified).

Answer to the cross-interogatorys submitted by J. H. Mensimon, counsel for E. Clayton *et al:*

To the 1st cross-interogatory V. R. Tommy answers: I was not so advised. I know nothing about the matter inquired of in their interogatories.

To the 2d cross-interogatory he answers: The iron was sold at less than the usual price. We would not have sold for less than $45.00 per ton for cash, delivered at Spartanburg. We were selling for $46.00 to the Macon and Brunswick at the same —. The M. & B. was owned and controlled by the State, and we were selling to other roads at even a higher price.

To the 3d cross-inter-og'y he answers: If the coupons of the Rolling Mill Company were not presented when the bonds which they held against the S. & A. R. R. had coupons due attached, I suppose they were not presented because the bonds were held as collateral security, and I suppose the notes were not due. I am sure that I did not present the coupons which I held, because they were

362 given as collateral security, and the note which they were intended to secure was not due.

To the 4th cross-inter-og'y he answers: So far as I know they were not apprised of the fact. I did not know that the road was being simply built by its bonds.

Mr. NEWMAN, counsel representing Mr. Merrimon, asked the following questions:

1st. Was not Mr. Goodnow your general manager, and do you know what he knew?

Ans-er. I know not what Mr. Goodnow knew. He was our general manager.

2. Had not Mr. Goodnow general management of the contracts of the Rolling Mill Company?

Answer. He had general management of contract after the advice of the directors.

3. Was he not authorized to make their contracts with the S. & A. R. R. on such terms as were satisfactory to himself?

Answer. All that I know on this subject is contained in the minutes of our directors' meeting of January the 8th, 1877.

The minutes were then introduced, and a certified copy of the proceedings are hereto attached, marked Exhibit "D."

363 To the 5th cross-inter-og. he answers: W. H. Inman has no immediate interest in the Atlanta Rolling Mill Company. I do not know whether he has any interest in the Bartow Iron Company, Roger Iron Company, or Tennessee Coal and R. R. Company, they being the only corporations interested in the Atlanta Rolling Mill Company.

Cap. NEWMAN asked the following question:

Question. Has the Atlanta National Bank any of the mortgage bonds of the Rolling Mill Company?

Ans. I do not know.

To the 6th cross-inter-og. he answers: Only the three corporations above-mentioned. No bank has any interest. There is no member of the Atlanta Rolling Mill Company connected or a member of either of the corporations interested, so far as I know.

Capt. NEWMAN asked:

Question. Has not the bank of which you are president some of the mortgage bonds of the Rolling Mill Company? I allude to the Georgia Bank and Trust Company? How long have you held such mortgage bonds?

364 We hold a few bonds of the Rolling Mill Company as collateral security from Louis Schofield. The bonds amount to about $3,000.00 to $5,000.00, and the bank has held them since 1874.

To the 7th cross-inter-og. he answers: The last iron was not delivered to S. W. & C. R. R. Company by our company, nor was it used by the S. W. & C. R. R. with my knowledge or consent.

To the 8th cross-inter-og. he answers: My purchase of the five bonds was a private transaction. I have already exhibited them.

To the 9th cross-inter-og. he answers: Gen'l Austell had no connection with the Atlanta Rolling Mill Company. Gen'l Austell would receive letters from Spartanburg in regard to the purchase, and would exhibit those letters to me. I allude in this connection to the sale of iron to the receiver. Gen'l Austell had nothing to do with the first purchase, so far as I know.

To the 10th cross-inter-og. he answers: The legal rate of interest was 7 per cent. unless by written contract, and then 12 per cent. can be charged.

365 By Capt. NEWMAN:

Question. Do you know to whom the last lot of iron sold to the R. R. company under the first purchase was delivered?

Answer. I don't know.

Cross-question by Col. COLEMAN and answer submitted by V. R. TOMMY to the same:

To the 1st cross-inter-og. he answers: I gave $1,250.00 for the bonds.

To the 2nd cross-inter-og. he answers: It was paid cash.

To the 3 cross-inter-og. he answers: In money.

To the 4th cross-inter-og. he answers: It was paid Oct., 1878.

To the 5th inter. he answers: I have already explained the cause of my purchase.

To the 6th X inter. he ans.: At the suggestion of my attorney, W. S. Thompson.

To the 7th X inter. he ans.: Mr. W. S. Thompson simply advised me, in view of the dissatisfaction of the bank directors, to take up the Rolling Mill Company note, and then to buy these bonds
366 to secure myself.

To the 8th X inter. he ans.: I have.

To the 9 X int. he ans.: No person or corporation has agreed in any way to indemnify me as to costs or otherwise.

To the 10th X inter. he ans.: There were no agreements.

To the 11th X inter. he ans.: He was not interested in any way or manner at the date of the mortgage. He became a director on the 24th of Jan'y, 1877, and remained a director until the 15th of Jan'y, 1879.

V. R. TOMMEY.

Answered, sworn to, and subscribed before me, this 29th of Oct., 1879.

HOKE SMITH, *Com.*

367 *Mr. T. W. Chandler.*

To the 1st inter-ogatory he answers: I am fifty-two years old; live in Atlanta, Ga., and am secretary and treasurer of the Atlanta Rolling Mill Company; I am not one of the complainants or the holders, or the owner of any of the bonds.

To the 2ond inter-ogatory he answers: I am sec't'y & treas. of the Atlanta Rolling Mill Company, and have been for the past three years, during a part of which time it was known as the Schofield Rolling Mill Company.

To the 3rd inter-ogatory he answers: There were a large number of bonds received from the S. & A. R. R. Co., all which have been handed to the special commissioner; of these from 193 to 197, inclusive, for $1,000, were sold to Mr. V. R. Tommey for the sum of $1,250. Exhibit C is the account of iron sold to and cash received from the S. & A. R. R. Company, showing a balance due to the Atlanta Rolling Mill Company from the S. & A. R. R. Company, with the exception of interest, which is not calculated in the same, of $56,680.19. All of the iron specified in the account just mentioned was consigned to the S. & A. R. R. Company, under the contract made by Mr. Goodnow with said company in the month of January, 1877, and I am not cognizant of its ever having
368 been delivered to any other road or person by the consent of said company, or of any person whatever who had authority to give said consent. The report of the contract was made by Mr. Goodnow in the latter part of Jan'y, 1877, and during that month we were delivering iron rails to the Macon and Brunswick R. R., on the cars at the mill, for $46.00 per ton, also to the S. C. R. R. Co., delivering in the city of Augusta, at $48.00 per ton. According to

my knowledge of the iron trade at the time this iron was sold, I am satisfied that the iron sold was worth $45.00 and over, cash, delivered at Spartanburg. The bonds came into the possession of the Rolling Mill Company as collateral to secure the payment of notes here exhibited to the special commissioner, and to secure the balance of the account stated. The reason why none of the Jan'y and July coupons were presented, was because none of the notes or the account for which the bonds were held as collateral security were due prior to July, 1878, except that portion of the account which was paid cash. No demand was afterwards made, because of the insolvency of the R. R. company. Mr. Goodnow does not now reside in Atlanta. He was discharged from the employ of the Rolling Mill Company about the 1st of Nov., 1878, and has since left the State.

Cross-inter-og. and answers to questions propounded by Capt. NEWMAN:

369 Gen'l Austell became a stockholder just before he was elected a director; at least, then, for the time, he so appeared upon the books of the company since my connection with the company. It was on the 22d day of Jan'y, 1877. He held one hundred shares, the face value of which was $10,000.00.

(Witness here presented the stock-book of the company, which shows the stock was transferred to Gen'l Austell by Wm. Goodnow.)

Since that time Gen'l Austell has owned 160 shares of stock, 60 shares of which he has since transferred to W. W. Austell, his son. Gen'l Austell ceased to be a director on the 15th day of January, 1879. Mr. Goodnow was the general manager of the Rolling Mill Company at the time the contract was made, who reported to a meeting of the directors on the 23d day of Jan'y, 1877, as appears by minutes, a copy of which report is presented to the special commissioner, hereto attached and marked Exhibit E. W. W. Austell succeeded his father a- a director in the Atlanta Rolling Mill Company, and has continued a director until the present time.

By consent of parties the questions propounded by Mr. Thompson and Capt. Newman were not written out, but the testimony taken in shape of a narrative. The question asked by Mr. Coleman was not propounded to witness because it had already been answered fully.

THOS. W. CHANDLER.

Answered, sworn to, and subscribed before me, this Oct. 29th, 1879.

HOKE SMITH, *Com.*

370 EXHIBIT A.—HOKE SMITH, *Com.*

$2,500.00 SPARTANBURG, S. C., *Sept.* 1, 1877.

Twelve months after date the Spartanburg and Asheville Railroad Company promise to pay to the Atlanta Rolling Mill Company,

or their order, at the Atlanta National Bank, at Atlanta, Ga., twenty-five hundred dollars for value received, with interest from date at the rate of ten per cent. per annum, having deposited with said Atlanta Rolling Mill Company as collateral security for the payment thereof five of the first mortgage — of said company for one thousand dollars each, and the first coupons of which are due Jan'y 1st, 1878, and which said bonds, or any part thereof, the said Spartanburg and Asheville Railroad Company hereby authorize said Atlanta Rolling Mill Company to sell without notice, at public or private sale, at the option of said Rolling Mill, in case of non-performance of the above promise, applying the net proceeds to the payment of this note, including interest at the rate of ten per cent. per annum, and all counsel fees and expenses incurred, and accounting to the said railroad company for the surplus, if any. In case of deficiency the said Spartanburg and Asheville Railroad Company promise to pay to the said Atlanta Rolling Mill Company the amount thereof forthwith after such sale, with legal interest.

THE SPARTANBURG & ASHEVILLE
RAILROAD COMPANY,
By D. R. DUNCAN, *President.*

Attest: [L. S.] (Signed) WM. K. BLAKE,
Sec'ty & Treas.

Endorsement: Pay Georgia Banking & Trust Company. V. R. Tommey, president Atlanta Rolling Mill Company.

371 EXHIBIT B.—HOKE SMITH, *Com.*

(And I further certify that bonds 193, 194, 195, 196, & 197, were sold to V. R. Tommey, on the 18th day of Oct., 1878, by virtue of a resolution of the board of directors of said Rolling Mill Company, as follows, passed on that day as follows:)

* * * * *

"On motion, resolved unanimously that Mr. Tommey, pres'd't, be authorized to rule the five one thousand dollars Spartanburg and Asheville railroad bonds, held by his bank as collateral, and apply the proceeds to a note held by the Georgia Banking and Trust Company.

* * * * *

THO. W. CHANDLER,
Sec. & Treas. of the Atlanta Rolling Mill Company.

372 THIS IS EXHIBIT D.—HOKE SMITH, *Com.*

ATLANTA, GA., *Jan'y 8th*, 1879.

At a meeting of the board of directors of the rolling mill company, held in pursuance of a call by the president, the gen'l manager having informed the board that he had received an application from the authorities of the Spartanburg and Ash-ville R. R. for a supply of iron, it was resolved, that William Goodnow be, and he

is hereby, authorized to confer with the authorities of the Spartanburg and Ash-ville R. R. Company, relative to the sale to said company of 2,000 tons of iron, and to make a trade with said company for furnishing said amount of iron on such terms as may be satisfactory to said manager, he being instructed to make the best trade possible (keeping in view our financial condition).

373 THIS IS EXHIBIT E.—HOKE, SMITH, *Com.*

ATLANTA, GA., *Jan'y 23rd*, 1877.

At a meeting of the board of directors of the Schofield Rolling Mill Company, held in pursuance of the adjournment of Jan'y 8th instant, the minutes of the meeting of Jan'y 8th instant were read and confirmed.

The gen'l manager reports that in pursuance of the resolution of this board, on the 8th instant, he had visited Spartanburg and had arranged to furnish — tons of iron to the Spartanburg and Asheville Railroad on terms advantageous to this company.

374 EXHIBIT F.—HOKE SMITH, *Com.*

(I, Thomas W. Chandler, secretary and treasurer of the Atlanta Rolling Mill Company, do certify that the following bonds of the Spartanburg and Ash-ville Rail Road Company were deposited with said rolling mill company as collateral for the payment of indebtedness of said railroad company, to said Atlanta Rolling Mill Company, for iron (as shown by proven account hereto attached), to wit:)

Nos.	127 to 134, 8 bonds,	@	1,000.00	8,000 00
"	107 to 116, 10 "	@	500.00	5,000 00
"	396 to 400, 5 "	@	1,000.00	5,000 00
"	359 & 360, 2 "	@	1,000.00	2,000 00
"	342 to 346, 5 "	@	1,000.00	5,000 00
"	367 to 381, 15 "	@	1,000.00	15,000 00
"	385 & 386, 2 "	@	1,000.00	2,000 00
"	347 to 356, 10 "	@	1,000.00	10,000 00
"	193 to 197, 5 "	@	1,000.00	5,000 00
"	135 to 150, 16 "	@	1,000.00	16,000 00
"	365 & 366, 2 "	@	1,000.00	2,000 00
"	382 to 384, 3 "	@	1,000.00	3,000 00
"	387 to 395, 9 "	@	1,000.00	9,000 00
"	161 to 178, 18 "	@	1,000.00	18,000 00
"	101 to 106, 6 "	@	500.00	3,000 00
"	108 & 199, 2 "	@	1,000.00	2,000 00
	Total			$110,000 00

And I do further certify that pursuant to the terms of an obligation of said railroad company as follws, to wit:

375 It having been agreed by the parties in this suit that the undersigned should take the testimony of such witnesses as

should be produced before him by any of the parties therein, and that such testimony should be used in all respects by A. Burwell, Esq., especial master in equity, as if the same had been taken by him in person. In accordance with said agreement, all parties being represented by counsel, I proceeded, on the 16th day of October, 1879, at the court house in the town of Hendersonville, to take the testimony of the following persons as witnesses: Albert Cannon, James Morris, E. M. Clayton, R. W. Allen, J. P. Johnson, Ephriam Clayton, J. E. Fry, Rob. B. Vance, T. Coleman, George C. Perrin, D. R. Duncan, R. Y. McAden, C. G. McDowell, and T. A. Allen, and do hereby certify that the testimony hereto appended is a correct and true statement of the evidence and exhibits, as sworn to before me,

W. W. JONES.

376 ALBERT CANNON, witness for the defendants, being sworn, says:

Who composed the firm of Albert Can-on & Company?

A. R. W. Allen, A. Can-on, J. P. Johnson, Sr.; this company had a contract with Spartanburg and Asheville Railroad Company, which was in writing.

Question. How were you paid for the work which you did under the contract?

Question objected by plaintiff upon the ground that the contract was in writing.

Answer. We were paid in Henderson county bonds; there was a deficiency behind amounting to the amount we obtained judgment for in the suit against said company in Henderson county court in favor of Allen, Can-on & Company. Mr. Allen and myself went to the office of the Spartanburg and Asheville Company at Spartanburg, and made a demand upon Maj. Duncan, the president of that company, for a settlement of our contract. We asked for a payment of our final estimates and the balance due us upon our contract. Maj. Duncan replied that they had no money, and that the Henderson county bonds had become exhausted; that he gave him a five hundred dollar bond and said that that was the last they had. This was some time in the early part of November, 1877—about the second week. The mortgage was authorized by the stockholders at the August meeting, 1876. I don't know of my own knowl-

377 edge that the mortgage was authorized at that time, but such was my understanding. My contract was entered into about the 27th day of March, 1876, and we commenced work about the first day of June, 1876, and completed the same about the 7th day of November, 1877. We did all the work agreed to be done under the contract, and it was received by the resident engineer, Mr. G. C. Perrin, and also by the chief engineer, Col. Thad. Coleman. The company has been using our work since the 4th day of July, 1879, and continue to use it. The character of our work was grading, making culverts, and clearing off the land the company claimed as a right of way. Gen'l Alfred Austell knew that we were doing this work. I told him that we were doing the work from Henderson-

ville to Butt Mountain. I don't know that I told himwhen we commenced the work. I did not tell him how long that it would take us to complete it, as I remember.

Gen'l Austell knew that the work was not done at the very day when the stockholders of the Spartanburg and Asheville Railroad Company met to vote upon placing the mortgage upon that road, and before the vote was taken I told Gen'l Austell that we were at work on the railroad from Butt Mountain to Hendersonville; this is to the best of my knowledge; upon reflection I am positive that this was the time, because it was a little over a year from that time to the completion of our contract. Mr. McAden knew that I was a con-
378 tractor; why I know this to be true Mr. McAden instructed the conductors on the road to allow me to pass, as I was a contractor; my best impression is that this was in the summer 1876; Col. Clayton and his sons had a contract near Mr. Garrison's, in Polk county, and were working on it at the time; Gen'l Austell, W. H. Inman, & Col. McAden came up the road at the time of the meeting; when the mortgage was first authorized at the annual meeting of the stockholders in 1877, Maj. Duncan made a statement of his dealings in the first mortgage bonds of the company, that he had only sold about four thousand dollars' worth of those bonds, and received dollar for dollar in freights over the road; my impression is that he said that he had let the Spartanburg and Union Railroad Company have as collaterals for the use of their rolling stock about fourteen thousand dollars' worth of these bonds; Maj. Duncan in that meeting stated that he had only absolutely sold the amount of bonds to the South Carolina Railroad Company for freights on iron at par, and that the remainder of the bonds belonged still to the Spartanburg and Ash-ville Railroad Company, and that he would resign his office before he would sell them for less than eighty cents on the dollar; Col. McAden was in the meeting at that time; I think Maj. Duncan stated in that meeting that all the bonds were in his possession except those he had sold to the South Carolina railroad, and those deposited with the Spartanburg and Union Railroad
379 Company as collaterals for the use of rolling stock; Mr. McAden stated in that meeting, my best impression is, that he would take twenty thousand dollars' worth of those first mortgage bonds at eighty cents, provided that fifty thousand dollars' worth of them would be taken at eighty cents in the dollar, and that he would double that provided that one hundred thousand dollars' worth of them were taken at eighty cents. He said that those bonds were a good investment at eighty cents. It was discussed in that meeting that the railroad would form a connecting link from Chicago to Charleston and become a very important road; I think the contractors, Col. Robert Coleman and the Claytons were there; the firm of Rice and Coleman agreed to take one one-thousand dollar bond of the road at eighty cents, provided that Col. McAden's proposition was carried out.

Cross-examination:

I was at the meeting August, 1876, which authorized the execu-

tion of the mortgage, and as a stockholder of the company I voted for it; stated to Gen'l Austell in the conversation heretofore related, when I told him of the contract from Butt Mountain to Hendersonville, that I was to be paid in Henderson county bonds; in our final settlement after the completion of our work upon the contract with Maj. Duncan, balance due on the estimates was twenty-seven hundred and ten dollars; Maj. Duncan gave us a note of the
380 railroad company for two thousand dollars, and pledged as collaterals for the payment of that note four thousand dollars of the first mortgage bonds of the company; then we told Major Duncan at that time that if he would let us have these mortgage bonds at fifty cents in the dollar, that we would take them absolutely as a sale, but he refused to do it or to let us have them as a collateral for less than fifty cents in the dollar; I remember that Maj. Duncan read at the meeting August, 1877, his annual report, and in that report he made no mention, to the best of my recollection, of any sale on hypothecation of any mortgage bonds except those heretofore testified to by me. Mr. McAden at that meeting urged upon the stockholders to come in and take the bonds and prevent outside parties from getting possession of the bonds of the road. Six or eight parties proposed to take bonds at eighty cents in the dollar to the amount of eight or ten thousand dollars; I remember that there was a committee appointed to canvass the counties along the line of the road to see if they could not get a sufficient number of parties to accept Mr. McAden's proposition.

Re-examined:

I voted in the meeting of August, 1876, for the resolution to place a mortgage upon the road; I never saw the mortgage, and never knew what was in it; I don't know that the mortgage is in
381 accordance with that resolution; I did not know at that time that I had any lien upon the property of the company by virtue of the contract of Can-on, Allen and Company; I never heard any person or contractor express that I had a lien; if I had known that I had a lien I never would have voted for the resolutions placing the first mortgage upon the company; I only had one hundred dollars' worth of stock in the company, and Allen had one share; Johnson had no stock in the company at the meeting, 1877, when this discussion about the bonds at eight cents occurred; I knew the ability of some of the men to buy the bonds; our company was not at that time able to buy one thousand dollars of the bonds; from conversations, I know that Col. Coleman was not able to buy a large amount of the bonds; Col. Coleman said that they would have to pay for them in work; I know generally the persons who composed the meeting of August, 1877; there were none of them, outside of the board of directors, men of much means, but that McAden, Austell, and Inman were reputed to be men of wealth.

A. CANNON.

382 R. W. ALLEN, witness for the defendant, being sworn, says:

Quest. Are you a member of the firm of Can-on, Allen and Company?

Answer. I am. I was not present at the meeting authorizing the mortgage. I did not know that such a thing would be voted on that day.

R. W. ALLEN.

383 J. P. JOHNSON, Sr., witness for the defenant, being sworn, says:

I am a member of the firm of Can-on, Allen and Company, and have never been a stockholder in the S. & A. Railroad Company.

J. P. JOHNSON, SR.

384 C. G. McDOWELL, a witness in his own behalf in this suit, being sworn, says:

On the 13th day of November, 1877, W. T. Sanders, an engineer in the employ of the S. & A. R. R. Company, was indebted to me for board while in the service of the said company forty-five dollars, and drew an order upon W. K. Blake on the said date for that amount. Said acceptance is exhibited and herewith filed, marked Exhibit (O. K.) On the same day W. K. Blake, secretary and treasurer of the S. & A Railroad Company, accepted said order, and his acceptance is written in due form upon its face.

That the S. & A. Railroad Company is further indebted to him in the sum of one hundred and thirty-six dollars, due by account for board of engineers and services, which account is exhibited and filed, marked Exhibit (XXX).

That said account was approved by T. Coleman, chief engineer, and signed by him.

That the S. & A. Railroad Company is further indebted to him in the sum of eleven dollars, balance due for grain, corn, and rye sold to said company about the month of November, 1877, for the use of said company.

C. G. McDOWELL.

385 W. K. Blake, sec. and treas. S. & A. R. R., please pay to C. G. McDowell, Hendersonville, N. C., forty-five dollars, $45.00, and charge the same to my account.

W. T. SANDERS.

Spartanburg, S. C., Nov. 13th, 1877.

[Endorsed across face:] Accepted & payable when in funds. Nov. 13, 1877. Wm. K. Blake. sec't'y & treas.

386 Spartanburg and Ashville Railroad Company t- C. G. McDowell, Dr.

To board of engineer party in months of May and June, 1875	$75 00
Interest	
To board of engineer party in the months of October & November, 1876	$53 50
Interest	
To services of one man as civil rodman	$7 50
	$136 00

Approved, correct.

T. COLEMAN,
Chief Engineer.

387 T. A. ALLEN, a creditor and defendant, being sworn and examined in his own behalf, says:

That the Spartanburg and Asheville Railroad Company is indebted to me in the sum of seventy-three dollars and fifty cents, balance due upon draft of H. Tanner, superintendent, on the president on said road, dated August 20, 1878, for corn and supplies furnished to feed the convicts then working upon said road; said draft is exhibited and marked Exhibit (* * * *). This draft was originally for one hundred — twenty-three dollars and fifty cents, but payments have been made reducing the amount down to the figures already referred to as a balance.

That the S. & A. Railroad Company is further indebted to me in the sum of two hundred and seventy-seven dollars and eighty cents for corn, meal, hay, and supplies furnished the road to enable *the* it to carry on its work. This amount due me is further evidenced by a draft also drawn by A. Tanner, superintendent of the road, upon the S. & A. R. R., which is exhibited and marked (* * * * *). This draft is dated Sept. 30, 1878, and none of it has ever been paid.

That the S. & A. Company is further indebted to me in the sum of five dollars and fifty-two cents, amount paid out upon a ticket upon the said road for travel upon said road. This railroad was indebted to me by account in the sum of fifteen dollars. The
388 S. & H. Railroad closed up the account with me by issuing to me on the 25th of Sept., 1878, said ticket. I have rode out three hundred and sixteen miles of said ticket at three cents per mile, the price appearing upon the face of the ticket. This ticket was for five hundred miles' travel upon said road, and said road now refuses, withour any cause, to allow me to use the same, leaving one hundred and eighty-four miles unused. The S. & A. Road refuses now to allow me to use the balance of the ticket by travelling upon the same, or to refund to me my money for the same. This ticket is exhibited and marked Exhibit (V). There appears to be fifty-four miles punched out upon this ticket more than I ever

rode upon said road; this is an error upon the part of the ticket agent or conductor; he was drunk at the time.

I never rode the number of miles appearing to have been used upon the face of the ticket by fifty-four.

T. H. ALLEN.

389 S. & A. R. R. Co.

Due T. A. Allen for corn meal, hay, &c., supplied to stockade ($277.80), two hundred and seventy-seven dollars & 80 c.

Sept. 30th, 1878. A. TANNER, *Supt.*

$277.80. Per JAS.

390 SALUDU, 8, 20, '78.

Maj. D. R. DUNCAN, *Pres't S.* [&] *A. R. R. Co.:*

Please pay to Dr. T. A. Allen, for corn, &c., supplied to stockade ($123.50), one hundred and twenty-three dollars and fifty cents.

A. TURNER, *Supt.*

Per JAS.

391 J. E. FRY, witness for defendant, being sworn, says:

I am a member of the firm of Fry and Deal; had a contract upon the S. & A. railroad to do the trestling from Nos. 9 to 12 on the Pacolet division of the road.

I have commenced suit to recover my debt for that work on the road. I am a practical mechanic, and gave my personal labor and attention in building the trestles; had hands employed under me, and paid them for the work.

I saw Mr. W. H. Inman and Gen'l Austell at my camps while I was working on the trestles I have just mentioned. I understood then that a mortgage had been placed upon the road. When Austell was there, I think Maj. Duncan & Col. McAden were with him. I saw on the line of the South Carolina line, before I came to Pacolet, Mr. Austel, Col. McAden, Mr. Robert Oates. I did other work at Green river, and was paid for that. I got the money through Maj. Duncan. I knew nothing about where the money came from

Cross-examined:

The firm of Fry & Deal undertook to do this work as contractors, and not with their own hands or personal labor. I can't fix the time when I saw Mr. McAden, Austell, and Inman at my quarters.

392 Re-examined:

We contracted to do the work, and did some of it with our own hands. I had ten or fifteen or twenty hands employed from time to time. Mr. Deal is not a mechanic. I gave the entire work my actual personal supervision. I did not vote for the mortgage, and never was in a stockholders' meeting until 1878. Mr. Deal was in the stockholders' meeting in 1877, but was not a stockholder. He was not a stockholder in 1876. I am now a stockholder.

I had no knowledge that I had any lien by virtue of my contract

upon the road otherwise than under the mechanics' and laborers' lien law. I heard no such suggestion from any source that we or any of the contractors had any lien by virtue of our being creditors prior to the execution of the mortgage. When Mr. McAden, Austell, and W. H. Inman were at my shanties, as before referred to, it was after the execution of the mortgage; my section of the road was unfinished and work was going on. I do not know that the work of my contractor was completed at that time. I do not know whether Rice and Coleman's section, from Butt mountain to Green river, was finished; they had not commenced work upon their new section, but were at work somewhere between Green river and Butt Mountain Gap at that time.

JAS. E. FRY.

393 EPHRAIM CLAYTON, witness for the defendant, being sworn, says:

I was a contractor on the S. & A. Railroad, and commenced work about the last of September or 1st of October, 1874; was on the work in person until the 1st of April or last day of March, 1877; then went to the Western North Carolina railroad. I left my son Edwin and Wessly in charge of my business on the S. & A. railroad. Edwin was the principal man; Edwin was my financial manager while I was at work on the S. & A. railroad; he was sick for a while, and then Wessly took his place. I did not give my personal attention at any time to my finances, but left it to my two sons. My attention was given entirely to the carrying on of the work. I had no information touching the disposition made of any of the securities of the company, either county bonds or first (1st) mortgage bonds, by Major Duncan, the president of the company, or any one else. I might have inquired of my own sons, but received very little information from them. I was incouraged frequently by Maj. Duncan.

Cross-examined:

I was in the meeting which authorized the issuing of the mortgage. I have no recollection of voting, but understood that the mortgage was authorized at that meeting.

394 Re-examined:

I was consulted by my son about getting the deed for the Caruth lands, and they got the deed. My object in getting that title was to secure as much of my debt as I could. I don't know that I was in the house when the vote was taken upon the resolutions authorizing the mortgage. I was here in town, out of doors. I can hear pretty well; but in a house when there is any noise, then I can't hear to do any good. I was seventy-five years old last March. I have no recollection of my son Edwin coming to me in the meeting and telling me to vote my stock.

E. CLAYTON.

395 E. M. CLAYTON, witness for the defendant being sworn, says:

Question. State whether at any time when and to what extent you have had any connection with the work on the Spartanburg and Ashville railroad, from Spartanburg to this place, Hendersonville.

Answer. I was on the work from October, 1874, until the completion of E. Clayton's contract in Oct., 1877, except about two months. I was agent for my father, Ephriam Clayton, and managed his business. My brother, George W. Clayton, was also connected with me in managing the business. I never had any information touching the disposition of the 1st mortgage bonds until stockhonders' meeting in August, 1877. My first information was from Maj. Duncan, who stated that he had disposed of about four thousand dollars of the first mortgage bonds to the South Carolina Railroad Company in payment of freights, and that he had deposited about thirteen thousand with the S. & U. Railroad Company as collaterals for use of cars, &c.; that those were all he had disposed of. He made no statement at that time that he had hypothecated with W. H. Inman or the Atlanta Rolling Mill Company, or with any one else, any of the 1st mortgage bonds. He made no statement at that meet-

396 ing further about the first mortgage bonds. He made a full statement of the first mortgage bonds at the annual meeting of the stockholders, September, 1878; that was a written report. I never saw Gen'l Austell upon the work after the mortgage was executed, but think that he was at the annual meeting of the stockholders in 1877. I think Maj. Duncan, at that meeting, made a report of the progress of the work, how much had been done, and how much was to be done. I saw Mr. Inman upon my father's work after the mortgage had been executed; he seemed to be looking at the work; he was in company with Mr. McAden and another, not Mr. Austell. This was after the execution of the mortgage. I think I saw Mr. Inman on the work some two or three times during my stay at that place; I can't say that I saw Mr. Inman on the work before and after the execution of the mortgage, but saw him after. I saw Mr. McAden on the work frequently; I can't state how many times; my recollection is both before and after the mortgage, he seemed to be about as much interested in the work as I or any one else; he was always anxious to know how we were getting along; was sanguine about the completion of the work not only to Ashville, but to the northwest. I never, in my conversation with him, — anything about my father's contract or pay. My father left the work in April, 1877; the work was then left in my charge; no payments were made to me after my father left the work. Mr. McAden said at the annual meeting, 1877, that the bonds ought

397 to be worth eighty cents; that a bond worth less was no account; he offered to take ten thousand at eighty cents if we could get a subscription for forty thousand among the stockholders, contractors, or citizens. Strenous efforts were made to get people to subscribe and myself to subscribe for my father, but I declined, thinking that it was too much responsibility in my assuming it.

Gen. Vance made a speech advising the people that it would be better if they would take up these bonds here at home at eigty cents, if they had money they wished to invest. I think he said he had subscribed. There were five or six, I am confident, who subscribed. I did not subscribe, because we were not able, in the absence of my father; the responsibility was too great. I afterwards, upon the faith of statements made by Maj. Duncan and Mr. McAden, took for my father twenty-four hundred dollara worth of bonds in payment of mules, carts, tools, &c.; the statement made by Mr. McAden was that the bonds, he thought, were good investments at eighty cents; and by Maj. Duncan, as president, that they should bring that amount or not one of them should be sold by him; that he would resign first. I think that W. H. Inman was at that meeting. The stock above mentioned was purchased by the railroad company for the purpose of carrying on the work of grading. Of the series of one hundred dollar bonds, I took for my father's numbers 5, 7, and 8; of the series of five hundred dollar bonds, I took numbers
398 125, 126, 127, and 128, in payment at eighty cents in the dollar. All of these bonds I took have all of their coupons upon them now, except the ones which fell due first, July 1st, 1877. I took these bonds after the 14th day of October, 1877—about the month of Dec'r, 1877. I took these bonds and placed them in my safe, and never took them out until yesterday, and never asked the trustees named in the mortgage to collect the interest upon these for me, or to take any steps to foreclose the mortgage. The bonds are not in payment for any work done upon the railroad, but entirely and independent debt. The S. & A. R. R. Company, neither before the mortgage or at any time after, gave me any security for my father's debt against the company, nor at the time it was executed did they give me any security, nor did the company pay the debt.

On the day of the completion of E. Clayton's work on the road, which was the 14th day of Oct., 1877, Maj. D. R. Duncan, president of the road, stated that he had effected an arrangement which would enable him to pay my father on the debt due him for work two thousand dollars per month, and asked if that would be satisfactory; and I told him I thought that it would, after which he paid one hundred and forty-three dollars, but never paid any more. Maj. Duncan paid this amount; it was for supplies purchased for the convicts, such as shoes and other goods, purchased out *on* the
399 store; this had no connection with the work upon the road. There was never anything paid agreeable to the understanding to pay two thousand dollars per month. Maj. Duncan came to me about two months afterwards and stated that he had signally failed in the money arrangements he expected to make in New York, or which he thought he had made. Maj. Anderson was the superintendent of the Spartanburg, Union and Columbia railroad, and also S. & A. Railroad Company; he was looking after the tracklaying; was made superintendent of both roads at the same time, I think, and the building of company shop of the S., U. & C. railroad.

Cross-examined:

I was in the meeting of August, 1876, of the stockholders which authorized the execution of the mortgage, and voted for *for* the resolutions authorizing the mortgage, voting for myself and brother. I was at that time agent for my father upon the work. My father was present as a stockholder at that meeting. I was present also at the annual meeting in 1877, and heard a statement from Major Duncan about the road. In that statement he made no reference to the hypothecation of any other bonds than those already alluded to. I was in the annual meeting of the stockholders of 1878, and heard Maj. Duncan read his report, in which report he gave a full account of his hypothecation of all bonds which had gone into his hands.

I was struck with this from the fact that it was the first full
400 report of the bonds which I remembered to have heard.

After reading that report, at the same meeting, he was re-elected a director by the stockholders, and on the same day re-elected president of the road by the directors. I don't remember that there was or not any vote cast against Major Duncan.

Re-examination:

I do not intend to mean that my father was in the room at the time the resolution authorizing the mortgage was voted upon. I can't say that he was present at the time there was a discussion on the resolutions. The stockholders' meeting lasted about three hours, I think. There was some opposition which provoked remarks on both sides. I had always voted my father's stock at these meetings of the stockholders, and the reason why I did not vote my father's stock was that he was present, and I asked Mr. Blake, the secretary and treasurer of the road, if I should vote it or he; he said it was immaterial which. I told my father then, in the meeting, that Mr. Blake said that it was immaterial whether he or I voted his stock for the resolutions authorizing the mortgage. My father is quite deaf; there was a great deal of noise in the room at the time and he made no reply. I thought he heard me. At the time of voting I did not know of any lien which my father had by virtue of his contract upon the property of the company, and never had heard anything of the kind suggested by contractors or others, that the creditors of the company prior to the mortgage had any lien.

E. M. CLAYTON.

401 GEORGE C. PERRIN, witness for the defendant, being sworn, says:

It is admitted that Rice and Coleman own the John McMinn lands and another tract known as the Swain lans; another tract called the Speculation lands, for which there is a bond for titles from William Redman, Jno. & Francis M. Scott, trustees, and C. B. Justice, agent, to O. B. McClure, being the tracts of land mentioned and described in the exhibits marked (W, Y & Z), to which it is admitted the defendants, Rice and Coleman, have title.

I file statement, marks, (&c.), which I declare to be correct. The

work therein mentioned was done, I think, in part before the execution of the mortgage, in Oct., 1876; part of it I am very sure was done afterwards. The work done by the contractors was at reasonable price, I think.

GEO. C. PERRIN.

402 SPARTANBURG AND ASHEVILLE RAILROAD COMPANY,
FLAT ROCK, *Nov.* 7, 1878.

Capt. CARTER.

MY DEAR SIR: I herewith enclose a copy of Rice and Coleman's final estimate of all work done north of Green river. The work south of Green river was done under a separate contract, and has all been paid for.

Below I give a statement of the am't of work done on hand owned by Rice and Coleman. Their land is situated north of river, and is therefore all included under contract that has not been settled.

Am't of work done upon Rice & Coleman's land on which track has been laid	$3,358 93
On which track has not been laid	32,574 54
Total	$35,933 37

All figures given you are at bond prices. Bonds were rated at 65 cents. Their claim was registered in Hendersonville on the 14th or 15th of June.

I know of nothing else that would be of service to you.

Give my kindest regards to Mr. Carter.

Very truly & resp'ly,

GEO. C. PERRIN.

403 T. C. COLEMAN, witness for the defendant, being sworn, says (examined by Mr. Morris in behalf of T. G. Williamson):

I am acquainted with T. G. Williamson. He commenced work on the S. & A. Railroad, as resident engineer, August, 1874, and worked until March, 1877. The account of M. J. Fagg, marked Exhibit XX, is correct. The articles mentioned therein were received and used by the company. T. G. Williamson owed M. J. Fagg & gave him an order on Mr. Blake, secretary and treasurer of the company, which was accepted by Mr. Blake and deducted from the amount due Williamson from the company. This matter occurred in spring, 1877. I was the chief engineer of the S. & A. R. R. Company from the time of the organization until the 1st day of Oct., 1878. I am familiar with all the work which has been done on the road from Spartanburg to Hendersonville. Have had considerable experience as an engineer in surveying railroads. Had before this time been the chief engineer of the Western North Carolina Railroad. From my knowledge of the character of the work of the S. & A. R. R., and from my experience in such matters, I am of the opinion that the work upon the road between Spartanburg and

Hendersonville was taken and done by the contractors at reasonable prices. The work was generally well done, and was accepted by me as chief engineer of the company.

404 According to a cash estimate made by me about a year ago including the work done in Buncomb- co., and including the cross-ties and iron, the cost of the road, excluding what was expended upon the road by the receiver, has been about seven hundred thousand dollars; certainly not less than that amount. The estimate of the work yet to be done from Hendersonville to Asheville, in grading and trestling, not including cross-ties and iron, is about fifty-five thousand dollars.

I was in the meeting of the S., U. & C. Railroad Company at Maj. Anderson's office, in Spartanburg, when this loan of seventy thousand dollars to the S. & A. R. R. Co. was first discussed. My recollection is that the S., U. & C. company were endeavoring to negotiate a loan from Mr. Inman—I don't know whether from John or the old man—for the benefit of the S. & A. railroad. W. H. Inman was present. I remember his terms were about seventy thousand dollars for about two hundred thousand of the S. & A. railroad bonds as security, interest twelve per cent., and, I think, the time about one year only; and, I think, W. H. Inman proposed, too, to hold the directors personally responsible for the loan. My recollection is that the S. & A. R. R. were to give their note, placing their two hundred thousand dollars of bonds as collateral security. I remember Mr. Wilson, of Charlotte, opposed Inman very bitterly because his terms were so hard, and I think that was the occasion of the breaking up of the meeting. I was not in the meeting in which the loan was finally negotiated. In that meeting I remember

405 that there was a proposition from some one to associate some person with the president of — S. & A. R. R. Co. in the disbursement of the seventy thousand dollar loan. Maj. Duncan opposed this. It was supported by the members of the S., U. & C. board, and Mr. McAden, during the discussion, remarked that it was not his intention to reflect upon Maj. Duncan's management or disposition of this fund, and I think Major Duncan threatened to resign his office before he would submit to such an imposition. I think the proposition was withdrawn.

I think it was one of the requirements of the S., U. & C. Railroad Company that this loan of seventy thousand dollars should not be used in the payment of the debts due from the S. & A. R. R. Co. at that time, but should be used only on the work as far as it would go. My recollection is that the debt due from the company to contractors and the general indebtedness of the S. & A. company was discussed at that time, and that an effort was made to ascertain what the indebtedness was. Our president was inter-ogated about it. He made some statement, but I don't think he made it as large as I thought it was. My recollection is that he stated it at that time about fifty or sixty thousand dollars.

I remember that there was avowed expressions by members of the board of directors of the S., U. & C. Railroad Company of a desire to see the creditors of the S. & A. R. R. Company paid.

Mr. McAden & Inman both so expressed themselves. Maj.
406 Oates, a director of the S., U. & C. company, also endorsed the expression of the other members. His idea was that by pressing on the road to Hendersonville they would increase the value of the bonds so everybody could be paid. This was the *jist* of the discussion.

It was understood then that this last loan of seventy thousand dollars absorbed most of the mortgage bonds left in the hands of the S. & A. Railroad Company. I think that Inman remarked that he had rather lose himself than to see these people who had worked on the road so hard lose. I don't know Maj. McAden endorsed these expressions. None of the contractors were present. I have talked with Gen. Austell since the execution of the mortgage about the progress of the work; he would question me about the the work and seemed anxious to know what progress had been made. I gave him pretty full information about the work. These conversations occurred more than once. I never had any conversation with him about the Atlanta Rolling Mill iron and nothing to induce me to believe that he was concerned in it—the iron was good, but not as good as that received from the North, which was an exceptional lot. The price of iron at the rolling mills in the country —Northern mills—at the mills in the year 1877 varied from thirty-two dollars & fifty cents on the ton to thirty-four dollars and
407 fifty cents cash. We did not so regard it as a high price at the time, considering the value of the bonds.

Question. Do you know whether there was any opinion among the contractors, officers, and the employers of the S. & A. Railroad Company that creditors by contract with the said railroad company, before the execution of the mortgage deed, had by virtue of their contract a lien preferable to that of the mortgage deed?

Answer. I do not, and I never heard any suggestion of such a lien until after the commencement of this suit.

Question. Have you any means of information as to the knowledge or information of R. L. Coleman or S. M. Rice, contractors, or either of them, as to any statutory lien of the nature indicated as creditors, or under a contract made before the mortgage deed? State all you know bearing on the subject.

Answer. I certainly had the means of knowing, for I was very intimate with them. I never heard them express any such knowledge. They used to talk a good deal about their future prospects. It was not until after the work was finished that I heard either of them suggest or show any knowledge of section 48, chapter 26,
408 Battles' Revisal on Corporations, or their rights as creditors or contractors having preference under said statute. I have no reason to believe that the said statute had been brought to their attention before this suit had commenced. It was a surprise to me, and I am satisfied it was to Robert L. Coleman and S. M. Rice, when I heard of this statute. I first heard of the statute in a letter from Col. David Coleman, att'y.

The contract of Rice and Coleman was awarded in the usual way by a full meeting of the board of directors. After the awarding of

the contract to Rice and Coleman, as set out in the minutes, a printed contract, of the same form and tenor, except as to blanks, as that between the said S. & A. Company and Canon, Allen and Company, was signed by the President and sealed by Mr. Blake, secretary and treasurer, in behalf of the company. From some neglect or oversight these blanks were never executed by the other party. It was understood that the work was to be done and paid for according to the provisions of said printed form. I do not know what has become of said papers. The contract was for the grading and construction, except laying the iron, from Butt Mountain Gap to Pace's Gap,
except section 42, which was reserved by the company to be
409 done by their convict labor. In the progress of the work, section 42 being adjacent to the camp of Rice and Coleman, and the work from Pace's Gap to Green river becoming adjacent to the convict camp, after the removal of the convicts from the Pacolet division an interchange of said work was made for the mutual benefit of the parties by agreement. The contract as to the changed line was to stand upon the same footing and terms as the original contract, and the change not to effect the terms of the original contract, which were to apply in all their original force to the changed line.

T. COLEMAN.

410 Spartanburg & Asheville R. R. Co. to M. J. Fagg, Dr.

1877.

April 28.	To —— and fixtures for same		$62 90
" "	" 80 lbs. striking hammers		20 00
" "	" 40 lbs. tobacco		20 00
" "	" 300 " still, 19 c.		57 00
" "	" 2 bushels corn, $1.25; shoeing 2 mules, $2		3 25
	Feeding mules bought by Col. Blake		8 00
"	Expenses paid Morises Johnson		3 50
"	Paid Tom Highets' order		49 00
	" T. G. Williamson order		156 60
	Account rendered Col. Coleman for engineers' corps		15 00

Approved.

T. COLEMAN,
Chief Engineer.

411 ROBERT T. VANCE, witness for the defendant, being sworn, says:

I am a director in the S. & A. Railroad Company: was elected in 1876–7, & '8; have been a stockholder since 1875. I was present at the meeting of the stockholders in 1876 when a resolution authorizing a mortgage upon the property of the company was passed.

I was a member of the board of directors there; was elected at that meeting.

It may be that I was elected in my absence before that time. I was present at a meeting of the board of directors in 1876, the same time when the mortgage was authorized by the stockholders, and the board ordered the mortgage to be prepared. I don't remember

that I was ever at a meeting of the board of directors when that mortgage was produced after it was prepared, and never heard it read. I did not know at any time of the terms thereof especially.

I remember that I was at a meeting of the board of directors, in the office of Mr. Ewart, in the town of Hendersonville, immediately after this meeting of the stockholders which voted the mortgage, and the question of making the mortgage was mentioned, but I do not remember that its details were discussed. I don't remember
412 that any figure was mentioned at that time at which the bonds should be disposed of. I have a general impression on my mind that in the general conversation there had—it was suggested that the bonds should be worth eighty cents in the dollar; but I am not positive about that. I think I was not present at any meeting between August, 1876, & 1877. I was absent from home don't know that any meeting of the board was called between those dates. I was present at the general meeting of the stockholders and directors in August, 1877, and have no recollection of any statement being made of the disposition of the mortgage bonds until the annual meeting September, 1878. I was present at meeting of directors, in Spartanburg, in July, 1878, and the purpose of which was for consultation about going on with the work. Do not recollect that any question of disposition of the bonds was then mentioned or discussed. I do not remember that at any meeting of the board of directors which I attended the board were called upon to approve or disapprove of the price at which the mortgage bonds were disposed of, nor do I remember that the figures, at which the bonds were hypothecated, were ever mentioned at any meeting which I attended until after they were disposed of. To make myself understood, when the information did come, they had already been hypothecated. When the information did come,
413 there was no action taken by the board, but in private conversation among the directors there was an expression of opinion that they had been hypothecated at too low figures; whether all the members of the board expressed themselves so I can't say, but think it was the opinion of a majority of the directors. There was quite a pronounced expression of dissatisfaction at the price at which the bonds had been hypothecated. I am now speaking of the meeting in Sept., 1878, and what occurred after that time on account of that report; and after that meeting the contractors and creditors became greatly alarmed about their claims against the company. There was to have been a meeting of the stockholders in August, 1878, at Andersonville; I came to attend it; there was neither a quorum of the stockholders or directors present; the alarm manifested itself then among the contractors. The large counties in South Carolina were not represented, Union and Spartanburg were not represented. Henderson and Buncombe counties were represented. There would have been a quorum of the board of directors when Mr. Wiley, of South Carolina, arrived, but my impression was that the president of the board was gone, at any rate,
414 he did not call the board together, the meeting of stockholders was informally adjourned. Mr. Jeter was the general

representative of Union, but he was not there that day. Col. Ivens, of Spartanburg, was also absent. Mr. Williams, of Charleston, was also a director and not present. Mr. Wiley, of Columbia, came too late.

In speaking of the stock of Union county, S. C., it occurs to me that some other getleman sometimes represented that county in the meeting, I don't remember his name, but he was not present that day. The reason why there was not a quorum, Maj. Duncan explained that some of the gentlemen were engaged in the political campaign, and some were attending the court. He stated that he had tried to get a quorum. Maj. Duncan lives in Spartanburg and did not assign any reason why the stock of Spartanburg was not represented but stated that Col. Evans, of Spartanburg, was engaged in the campaign. Maj. Duncan, as president, applied to me and Col. Evans, at Washington, to sign a paper directing that a judgment be confessed to the contractors, and we signed it. I don't think there were any other names to the paper—this was in the spring,
415 1878. I supposed that this effort to confess a judgment was in good faith to give to the creditors a lien to secure their debt, Maj. Duncan at the time having expressed his anxiety to have them paid.

I think I made a motion before the board of directors in July, 1878, at Spartanburg, to confess a judgment in favor of the contractors. Col. Evans made a talk against it, and when it came to a vote the question failed. I don't think Maj. Duncan said anything, but he did not seem to show any sympathy with me, and did not come to my relief in the motion. During the meeting I had a talk with Col. Canon, out at one side, when he said that the judgment ought to be confessed, and Maj. Duncan said that the contractors ought to be paid, but don't think he said a judgment ought to be confessed. I brought up the question of confession of judgment again in the stockholders' meeting in September, 1878, at Hendersonville. Mr. Sawyer, one of the directors, took sides with me, and Col. McAden made a speech against it. Maj. Duncan did not second my motion at Hendersonville, but think he had some hopes of a settlement at Spartanburg. I was at the meeting of creditors at Spartanburg in Oct., 1878. I think at the July meeting at Spartanburg Col.
416 Ripley and Dr. Fletcher voted against the proposition to confess judgment. When Maj. Duncan applied to Col. Evans and myself at Washington to sign the paper spoken of in reference to confessing judgment, the question of the finances of the company was not mentioned. I regarded it as a precautionary measure, or a measure to make payment to the contractors sure. Maj. Duncan told me at the time that he could or would get other directors to sign the paper, but I don't know whether he did or not. The general impression in the stockholders and directors' meeting was that the bonds should not be sold for less than eighty cents, and I never heard it expressed in any of these meetings that the bonds should be hypothecated for less than what they should be sold at. I think that there was some feeling of uneasiness manifested among the contractors at the meeting at Spartanburg in July, 1878, but not so

much as was afterwards. I saw Gen'l Austell at two meetings, one time in Hendersonville in 1877, and the other may have been at Spartanburg; I am not positive.

Cross-examined by the plaintiff:

I voted for the resolutions authorizing the mortgage to be made at the stockholders' meeting in 1876. In the directors' meeting,
417 August the 9th, 1876, I voted for the resolution (furnished upon page 67, minutes of the board of directors,) as set forth on the minutes. I was also in annual meeting of directors 1877. I don't remember that the president stated about the disposition of the bonds, but heard read the president's annual report. (This is objected to by defendant, unless the reports are produced.) I heard also the reports of the other officers. My impression is that the board of directors directed that these reports be read in the stockholders' meeting. I do not remember that it was stated by the president in the stockholders' meeting that he had sold four thousand dollars of the first mortgage bonds to the South Carolina Railroad Company, nor that he had hypothecated fourteen thousand dollars of these bonds to the S. & U. Railroad Company at fifty cents in the dollar. I have heard other gentlemen say so, and I do not dispute it, but it is not in my memory now. I do not remember now any statement made at that meeting about these bonds. I have not recollection enough about it to say positively that it did not occur. I cannot recollect that Maj. Duncan, at the meeting of the directors immediately before the stockholders' meeting in August, 1877, made a statement as to hypothecating these bonds to different parties at fifty cents in the dollar. I will not say that he did not do it. I was a director of the company at that time, and also
418 vice-president. I had confidence in the president that he would place the bonds at the best figures possible, and I did not personally make inquiry. The office of vice-president gave me no power or control of the funds, but as director, I participated with my colleagues in whatever was done.

Question. Was not the report of the president approved by the board of directors and ordered to be read in the stockholders' meeting, together with the report of the secretary and treasurer.

Objected to by defendant.

Answer. The reports of the officers were read, and ordered to be read before the stockholders for information. I can't say that there was any dissent to anything contained in it. I am inclined to think that the directors authorized the president, in case there was a failure at this regular annual meeting, to have a meeting, to call a meeting in September, and that there was a resolution to that effect passed at the meeting held in Spartanburg July 2d, 1878. I do not say, or intimate, that the failure of the annual meeting at Hendersonville was the result of design, but I am free to say that there was such an impression in the community. When the resolution was passed in Spartanburg I did not anticipate a failure of the meeting, and I came at the regular time to attend it in good faith.

419 I was also present at the annual meeting, Sept., 1878, and heard the president read his annual report in the stockholders' and directors' meeting, in which he gave a full and detailed statement of the progress and condition of the work, of the disposition of the assets of the company, and how he had disposed of and hypothecated the first mortgage bonds of the company. And after that I voted for the re-election of Major Duncan, and think he was unanimously re-elected president of the company by the board of directors. He was not censured by the board of directors at that meeting, or any other meeting, for his conduct in the management of the affairs and property of the company, nor was anything of the kind ever proposed. There was no official action taken on the subject.

Re-examined:

There was some private criticism by some of the directors objecting to the price at which the bonds were hypothecated. I have a good memory, but have many cares, and was absent a great deal from home. There was no impression made upon my mind about these bonds until September, 1878. I did not charge my mind with the details of these matters, having left them to those who had charge of them. I think if there had been a full statement of the first mortgage bonds at the meeting of August, 1877, I should
420 have remembered it. This is an opinion based upon my habits of remembering business transactions. I have been a merchant the most of my life. Since 1872 I have been a member of Congress; was for eight years clerk of the court of pleas and quarter session for Buncombe county, in which there was a great deal of business transacted, it being a regular jury court. When I put my mind to anything I have a retentive memory. I cannot say that I charged my mind with the details of this business, because, as I have before stated, I left it to those who had charge of it.

Recross-examined:

Question. If the sale or hypothecation of any of the first mortgage bonds was mentioned in the report of the president in the directors or stockholders' meeting in 1877, why can you not remember that as well as you can remember the statements made in the report of the president at the meeting September, 1878, about the hypothecation of these bonds?

Answer. I cannot account for that, except by opinion; perhaps the reason is that the transactions of 1878 were more talked about and discussed by those interested in the road.

Question. Have you a recollection distinct enough about the president's report to the directors & stockholders in August,
421 1877, to say whether or not anything was said in the report about the hypothecation or sale of the first mortgage bonds?

Answer. I have already said that I do not remember anything was said in the report about the hypothecation of these bonds, but I have an impression on my mind that if a full statement about the hypothecation or disposal of these bonds had been made in August,

1877, as was afterwards made in 1878, I would have remembered more distinctly concerning the transactions.

Question. If the report of 1877 had contained a statement of the hypothecation of the first mortgage bonds to the Atlanta Rolling Company at fifty cents in the dollar for the purchase of iron for the railroad, would not that have produced such an impression upon your mind that you would have remembered it?

Answer. It would appear so.

ROB'T B. VANCE.

422 At Spartanburg, on Nov. 1st, 1879, the taking of testimony was resumed.

Present: W. P. Bynum, att'y; J. H. Merrimon, att'y; R. Y. McAden, att'y.

G. CANNON, a witness introduced by Mr. Merrimon, being duly sworn, says:

I am one of the witnesses to the mortgage which is exhibited to me; I witnessed the signing of this deed by W. H. Inman and J. B. Cleveland; I do not remember witnessing the signing of it by Mr. Jeter and Mr. Wiley: Maj. Duncan was present when Mr. Cleveland and Mr. Inman signed and acknowledged the execution of the deed by him; Mr. Jeter and Mr. Wiley were not then present; I think they may possibly have been present, but I think they were not; Jeter and Wiley have never acknowledged the execution of this mortgage in my presence, to my present recollection; the matter of their signing it has never been mentioned in their presence that I now remember. I went before the probate judge of Polk county and proved the execution of this mortgage.

My memory being refreshed, I now recollect that Mr. Jeter and Mr. Wiley signed this mortgage in my presence in Columbia during the session of the legislature of '77-'8; that is my impression. I had prior to that written my name on the deed as subscribing witness to the signatures of Inman, Cleveland, and Duncan. I did not
423 write my name as witness again, but was called upon by Duncan to witness the execution of the deed. I proved the execution of this mortgage, before the probate judge of Polk county in Nov., 1878; he asked me if that was my signature as witness to the deed, and I told him it was my signature, and some other questions that I do not now recollect. I then left.

Before the war the State of S. C. endorsed the bonds of S. & U. R. R. Company, and after the war, when that road was sold under the decree of foreclosure, there was left unpaid a balance of about 53 per cent. of the bonds, for which the State was responsible. I was a member of the Legislature of S. C. in the year 1877, and it was then agreed by S., U. & C. R. R. Company that if the State would issue bonds to pay up this balance, then aid would be extended by the principal men of that company to the S. & A. R. R. Company to build its road across the mountains.

Mr. McAden, Mr. W. H. Inman, and Gen'l Austell were the parties who represented the S., U. & C. R. R. Company in this offer, as I

considered. I do not know that they represented that company; they may have been acting merely for themselves individually. The act was passed, and over $200,000 were issued, but that was for all the holders of the bonds. I do not know how many the owners of the S., U. & C. R. R. got for their share.

(A copy of President Duncan's report for 1878 put in evidence.)

This report tells what was my recollection of the transaction.

424 I have been familiar with the S. & U. R. R. Company. But for the effects of the war that road could have kept up. I don't know how it could have paid its mortgage debt. It never declared a dividend to my recollection. For a long time I was not connected with the road. I became a director of the S., U. & C. R. R. at its organization. That was before the S. & A. R. R. Co. was organized. The directors and stockholders of S., U. & C. R. R. felt a deep interest in the building of the S. & A. R. R., and seemed to think it would be an important feeder to their road.

I do not know that the S., U. & C. R. R. expected to become the owner of S. & A. R. R. I never heard that matter discussed. The S. & A. R. R. is a connection of S., U. & C. R. R., and is run by the receiver. It is a direct extension of the S. & U. R. R. Company, as originally contemplated by the Charleston, S. & C. R. R. Company.

425 *Maj. D. R. Duncan.*

At SPARTANBURG, *Nov.* 18, 1879.

All the money paid to the company for stock and the proceeds of sale of county bonds was paid out and used in the construction of the road. The capital stock, so far as it was paid in, was all used in that way. The State of N. C. has no interest in this company, so far as I know. It is not a stockholder. The mortgage has never been registered but once in Spartanburg county. It was registered upon proof by Cofield, dated 20th June, 1877.

The board of directors of S. & A. R. R. Co. did not authorize me to file an answer in this case. They were not called together in regard to it.

The subpœna was served on me as president before I answered, and also a copy of the bill and injunction. The company owes Fry & Deal $135.66, a balance for cross-ties, with interest from April 30th, 1878.

(The other accounts filed by Fry & Deal is shown to witness, and he says that the account is in the handwriting of, and approved by, F. Coleman, the chief engineer of the company.)

By Mr. BYNUM:

All the proceeds of the sale or hypothecation of mortgage bonds was used in the construction of the road. My recollection is

426 that Mr. Jeter and Mr. Wiley signed the mortgage before it was registered in Polk county in Dec., 1877.

I am a lawyer, practicing in South Carolina. The mortgage was registered in Spartanburg according to the laws of S. C.

The answer of the company in this case was prepared by Col. Evans, who was and had been counsel for the company, and was also a director. He and Col. Cannon knew of the case, and that the company had been injoined.

I talked with Jeter and Wiley about the answer after it was filed, and heard of no disapprobation of it. It was expected that the creditors of the road would take some such course as was taken. My recollection is that Buncomb- county and other counties were represented in the meeting of 1876, which authorized the mortgage.

By Mr. MERRIMON:

I believe that the probate of the mortgage by Coffield is in proper and legal form in S. C., and is, in my opinion, a legal probate.

427 *J. A. Deal.*

AT SPARTANBURG, *Nov.* 18, 1877.

Fry and Deal furnished the S. & A. R. R. Company about seventy cross-ties, in addition to those already proved, worth 20 cents each. They were not inspected, as far as I know. He delivered them, as usual, on the side of the road.

Mr. Merrimon then offered in evidence the reports of the treasurer of the State of N. C., as it appears in legislative documents published by State of N. C., '72–3, to show in what corporation the State of N. C. had an interest.

428 *W. K. Blake.*

AT SPARTANBURG, *Nov.* 18, 1879.

The company owes E. Clayton the following:

May 13, '74	Account for sundries	$23 18
July 20, 1874.	Account for hire of wagons &c	45 00
Dec'r 18, 1874.	" " " "	82 50
Jan'y & February, 1876.	Account for hands	5 00

The company also owes R. S. Brittain:

June 21, 1878.	Order of	$12 30
July 12, 1878.	" "	9 35

429 And on said 2nd day of December, 1879, A. Burwell, special master, files in said court, with his said report, the following additional papers, in the order in which they are named, as follows, viz:

Report of James Anderson, receiver, with statement of account; transcript of records of suits and judgments in State courts against the Spartanburg and Asheville railroad, wherein the following-named persons are plaintiffs, , viz: Rice & Coleman, Thad-eus Coleman, Allen, Cannon & Co., E. Clayton, John Garrison, Geo. C. Perrin, Goodwin & Davis, C. W. Pearson, L. J. Pace, H. H. Gramlin; which said report and statement of said receiver and said tran-

scripts of record from State courts are in words and figures as follows, to wit:

430 SPARTANBURG, S. C., *Oct. 20th*, 1879.

Hon'l R. P. DICK,
U. S. Circuit Court, Charlotte, N. C.:

SIR: In compliance with your order, I took charge, as receiver, of the property of the Spartanburg and Asheville Railroad Company on the first of November, 1878. The road was turned over to me in running order from the junction of the Atlanta and Charlotte Air Line to a point known as Coleman's station, leaving fully 8 miles to be completed to Hendersonville.

The material turned over available for this purpose was 73,662 superficial feet of tressle timber, valued at $883.94, and two Wharton switches & frogs.

Agreeable to your order, I took in estimate for the completion of the work to Hendersonville from several responsible contractors. Capt. W. A. Potts, of Atlanta, being the lowest, the contract was awarded to him for the construction at $7,769.69, and the contract for rails and fastenings to the Atlanta Rolling Mills Co.

As directed in your order, I issued receiver's certificates, amounting to $35,000.00 (thirty-five thousand dollars.)

431 These certificates, bearing date ——, were sold at par to the following-named parties:

William H. Inman	$5,000 00
H. B. Plant	6,250 00
R. Y. McAden	6,250 00
Alfred Austell	5,000 00
First National Bank, Charlotte	12,500 00
Total issue	$35,000 00

Which are accounted for as follows:

Paid Atlanta Rolling Mill Co. for iron	$22,910 28
" W. A. Potts, contractor	7,642 75
" Rice and Coleman for ties	1,114 60
Paid sundries for materials, as per acc'ts and vouchers herewith	1,816 26
Tredeger Co., Richmond, Va	390 86
Expenses on convicts	80 00
Cash on hand	1,045 25
	$35,000 00

The line was opened to Hendersonville on the 5th of June. The increase in earnings since that time has fully justified the expenditure for its completion. A full statement of income, and expenditure is herewith submitted from the first of November, 1878, until the 30th of September, 1879, inclusive, which shows the total earn-

ings for that time to be $21,587.01, and the expenditure to be $18,856.54, leaving a balance of cash in hand at that time of $2,730.47.

Respectfully submitted.

JAS. ANDERSON, *Receiver.*

432 *Earnings of Spartanburg and Asheville R. R. from November 1st, 1878, to Sept. 30th, 1879.*

1878.					
Nov.	30th.	To earnings this month		1,059 64	
Dec'r	31.	"	"	920 58	
1879.					
Jan.	31.	"	"	926 92	
Feb'y	28.	"	"	1,338 44	
M'ch	31.	"	"	1,815 41	
April	30.	"	"	1,673 16	
May	31.	"	"	1,439 79	
June	30.	"	"	2,367 29	
July	31.	"	"	4,103 61	
Aug.	31.	"	"	3,749 03	
Sept.	30.	"	"	2,064 12	
					$21,457 99
To due stage line from Henderson to Asheville					129 00
" M. T. Faimer, agt. Flat Rock					02
					$21,587 01

432*a* *Expenditure of Spartanburg and Asheville R. R. from November 1st, 1878, to Sept. 30th, 1879.*

1878.					
Nov.	30.	By expenses this month		978 14	
Dec.	31.	"	"	979 40	
1879.					
Jan.	31.	"	"	1,270 96	
Feb'y	28.	"	"	900 72	
M'ch	31.	"	"	1,001 47	
April	30.	"	"	949 00	
May	31	"	"	2,432 38	
June	30.	"	"	1,354 34	
July	31.	"	"	2,655 37	
Aug.	31.	"	"	4,003 30	
Sept.	30.	"	"	2,331 46	
					$18,856 54

1879.				
Oct.	1.	By cash in treasury		$2,092 27
"		Due by M. L. Bishop, ag't, Inman, F. L., P. 3	2 87	
"		" C. H. Rogers, ag't, Campobelar, F. L., P. 7	4 43	
"		" W. E. Mills, ag't, Tryon, F. L., P. 18	13 86	
"		" J. Williams, ag't, Henderson, F.L., P. 23	177 95	
"		" J. B. Tanner, ag't, Saluda, F. L., P. 32	1 18	
"		" Thos. J. Vaugilder, ag't, Asheville, P. 41	115 56	
				$315 85
Oct.	1,	Due by A. & C. A. L. R. R. Co. for tickets, F. L., P. 27	11 50	
"		" S. C. R. N Co. for tickets, F. L., P. 33	66 50	
"		" W. & W. R. R., for tickets, F. L., P. 40	6 00	
"		" G. & C. R. R., for tickets, F. L., P. 44	165 80	
"		" G. & C. R. R., for tickets, F. L., P. 45	18 00	
"		" R. & D. R. R., for tickets, F. L., P. 52	9 00	
"		" Western R. R. of Ala., for tickets, P. L., P. 53	3 00	
"		" N. O. & Mobile R. R., for tickets, F. L., P. 56	6 00	
"		" Carolina Central R. R., for tickets, 58	7 50	
"		" C. C. & A. R. R. Co. for tickets, F. L., P. 70	9 00	
				$302 30
"		" Southern Express Company, F. L., P. 35		20 05
				$21,587 01

The above is a correct statement of the income and expenditures in operating the Spartanburg and Asheville R. road from the 1st of Nov., 1878, to 30th Sept., 1879, inclusive, vouchers for which are on file in this office.

JAS. ANDERSON, *Receiver.*

433 STATE OF NORTH CAROLINA, *Henderson County:*

Be it remembered, that on the 5th Monday after the 4th Monday in April, 1879, being the 2nd day of June, 1879, a superior court

was opened and held for the county of Henderson, at the court-house in Hendersonville. Present and presiding, the Hon. J. C. L. Gudger, judge of the 9th judicial district, when a suit was begun in words, letters, and figures as follows, to wit:

Summons.

Henderson County, in the Superior Court.

SPENCER M. RICE and R. L. COLEMAN, partners and doing business under the firm of Rice & Coleman, Pl'ffs,

vs.

THE SPARTANBURG & ASHEVILLE RAILROAD COMPANY, Def'ts.

The State of North Carolina to the sheriff of Buncombe county, Greeting:

You are hereby commanded to summons the Spartanburg and Asheville Railroad Company, the defendant above named, if
434 — be found within your county, to be and appear before the judge of our superior court, to be held for the county of Henderson, at the court-house in Hendersonville on the fifth Monday after the fourth Monday of April, 1879, and answer the complaint which will be deposited in the office of the clerk of the superior court of said county, within the first three days of the next term thereof, and let the said defendant take notice that if it fail to answer the complaint within that time, the plaintiff will take judgment against it for the relief demanded in the complaint.

Hereof fail not, and of this summons make due return.

Given under my hand and the seal of said court, this 4th day of November, 1878.

C. M. PACE,
Clerk Superior Court of Henderson County.

And upon the back of said summons is the following:

Service acknowledged at Asheville, North Carolina, November 11th, 1878.

JAMES P. SAWYER,
One of Directors of S. & A. R. R. Co.

435 We acknowledge ourselves bound unto the Spartanburg & Asheville Railroad Company, the defendant in this action, in the sum of two hundred dollars, to be void, however, if the plaintiff, Spencer M. Rice & R. L. Coleman, shall pay to the defendant all such costs as the defendant may recover of the plaintiffs in this action.

Witness our hands and seals, this 4th day of Nov'r, A. D. 1878.

S. M. RICE, [SEAL.]
P'r M. E. CARTER.
R. S. COLEMAN, [SEAL.]
P'r M. E. CARTER.
M. E. CARTER, [SEAL.]

Superior Court, Henderson County. June 4th, '79.

RICE & COLEMAN
vs.
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY.

Ordered, on motion of counsel for pl'ffs, that the time for filing the plaintiff'- complaint be extended until to-morrow, Thursday, June 5th, 1879, and that they have leave to file the same then as of to-day.

J. C. L. GUDGER, *Judge, &c.*

436 & 437 THADDEUS COLEMAN
vs.
THE S. & A. R. R. Co.

Same order for extending time and for filing complaint as in the above case.

J. C. L. GUDGER, *Judge, &c.*

NORTH CAROLINA, *Henderson County:*

Superior Court, Spring Term, 1879.

RICE & COLEMAN
vs.
THE SPARTANBURG & ASHEVILLE RAILROAD COMPANY.

M. E. Carter, being duly sworn, says: That on the — day of ——, 1878, J. P. Sawyer, a director of said company, whose name and signature to the acceptance of service appears endorsed on the back of the summons in this action, dated — day of ——, 1878, accepted service of the said summons and signed his name thereto in the presence of affiant, who saw him sign the same, this affiant, as
438 attorney for the plaintiffs, procuring such acceptance of service.

M. E. CARTER.

Sworn and subscribed, this 6th day of June, 1879.

C. M. PACE, *Clerk.*

STATE OF NORTH CAROLINA, *County of Henderson:*

RICE & COLEMAN, Pl'ff's,
v.
SPARTANBURG & ASHEVILLE R. R'D. } Mechanics' Lien.

The above-named Rice & Coleman, as contractors on the Spartanburg & Asheville railroad, file this, their notice of lien, in the office of superior court clerk of Henderson county, State of North Carolina. Said claim is for work done and labor performed in grading the said Spartanburg and Asheville railroad, in the county of Henderson, State of North Carolina, beginning at Greene river, in
439 said county, on line of said railroad, at or near station 2437, and extending to station 2641, near Butt Mountain Gap, in

said county, in which said work & labor was done and performed during the time included between 1st of April, 1876, and 15th of April, 1878, the work and labor having been continuously prosecuted during the whole of said time and finished on the 15th day of April, 1878, under contract with said railroad company, consisting of 54,122 yards of earth excavation, 20,903 yards hard material excav., 38,134 y'ds loose rock excav., 13,586 y'ds of solid rock excav., 107,031 y'ds of barrowed embankment, 793½ y'ds culvert masonry, 330 y'ds of paving, and 18,000 f't of cleanings and grubbings, together with haul on said material, for which said railroad company is now indebted to the said Rice and Coleman in the sum of twenty-two thousand four hundred and eighty-nine $\frac{30}{100}$ dollars ($22,489.30); said work and labor was done and performed upon the said railroad as above stated, & at the time stated, a full exhibit of which appears in detail in the estimate sheet hereto attached by the engineer of said railroad and herewith filed, and upon all grading, ex-
440 cavations, embankments, culverts, &c., between said Green river and said Butt Mountain Gap, in said county and State, as before stated; the said Rice & Coleman claim their lien for the sum of twenty-two thousand four hundred and eighty-nine $\frac{30}{100}$ dollars (22,489.30) in cash, with interest from 1st day of January, 1878.

This the 14th day of June, 1878.

RICE AND COLEMAN, *Contractors.*

Witness—
M. C. TOMS.

441 *Spartanburg & Asheville Railroad.*

Estimate of work done in the months of February, March, & April, 1878, on Sec. No. —, Green River Division, —— residence, by Rice & Coleman, contractors.

No. cub. y'ds.			
54,122,	excavation earth, @ 2.34		$12,448 06
20,903,	" hau. material, @ 45		9,406 35
38,134,	" loose rock, @ 69		26,312 46
13,586,	" solid rock, @ 1.54		20,922 44
107,031,	embankment earth, @ 26		27,828 06
	Do. rock		
793½,	culvert masonry, @ 5.40		4,284 90
	arch "		
	walls "		
	basking		
330,	paving, @ 2.30		759 00
18,000 ft.	clearing & grubbing 3,409 miles, @ 3.07		1,046 56
	B. M. feet trestle		
63,568	y'ds earth hauled 3,884 ft. extra, @ .01½ per 100 ft.		3,703 47
48,433	y'ds rock hauled 39,319 ft. extra, @ .04½ per 100 ft		8,509 52
	Total amount		115,280 82

Cash value of est	$115,280 82
Deduct previous estimates	96,404 64
Amount due	18,876 18

442 I certify this estimate is correct.

GEO. C. PERRIN,
Resident Engineer.

STATE OF NORTH CAROLINA, *Henderson County:*

I, C. M. Pace, clerk of the superior court in and for the county of Henderson, and State of North Caroline, do hereby certify that the foregoing is a true and perfect copy of a notice of lien duly filed by Rice and Coleman, in my office, on the 14th day of June, 1878, which was on said day entered by me in the lien docket in my office.

In witness whereof I have hereunto set my hand and official seal at office in Hendersonville, this the 21st day of November, A. D. 1878.

C. M. PACE, *C. S. C.*

443 Superior Court. Spring Term, 1879.

NORTH CAROLINA, *Henderson County:*

S. M. RICE & R. L. COLEMAN, under the firm name of Rice & Coleman, Pl'ffs.,

against

THE SPARTANBURG & ASHEVILLE RAILROAD COMPANY, Def't.

The plaintiffs complaining, allege:

1. That the defendant is a railroad corporation duly created and organized under and by virtue of the laws of the respective States of North Carolina and South Carolina, with power to sue and be sued, contract and be contracted with, and all other powers usually incident to such corporations.

2. That on the 30th day of March, 1876, plaintiffs, under the firm name of Rice & Coleman, entered into a contract and agreement with the defendant by which they agreed and undertook for the consideration and at the price hereinafter specified, to complete the gradation of the defendant's railroad in Henderson
444 county, North Carolina, beginning at Green river in said county, in line of said railroad at or near station 2437 and extending to station 2641, neat Butt Mountain Gap in said county, the said gradation consisting of excavations of earth, hard material, loose rock, and solid rock, embankment, earth borrowed, culvert masonry, paving, cleaning, and grubbing, earth hauled and rock hauled.

3. That in accordance with the said contract and agreement, the plaintiffs commenced the gradation of defendant's said railroad on or about the 1st day of April, 1876, and prosecuted the same continuously until the 15th day of April, 1878, when they completed

the entire work which they had contracted as aforesaid to do, and they fully and duly performed all the conditions of said contract on their part.

4. That the amount of work and labor performed by the plaintiffs in the graduation aforesaid, according to the estimates of the engineer, was as follows:

Excavation earth	54,122	cubic yards.
Excavation hard material	20,403	" "
445 Excavation loose rock	38,134	cubic yards.
" solid rock	13,586	" "
Embankment earth borrowed	107,031	" "
Culvert masonry	793½	" "
Paving	330	" "
Cleaning and grubbing 18,000 feet	3,409	miles.
Earth hauled 63,568 yards	3,884	ft. extra.
Rock " 48,433 "	39,319	" "

5. That the defendant promised and agreed to pay to the plaintiffs for the gradation, work, and labor aforesaid, in bonds of the county of Henderson, at their face value, the prices following, that is to say, for—

Excavation earth, per cubic yard	$2 34
" hard material, "	4 54
" loose rock, "	6 94
" solid rock. "	1 54
Embankment, earth borrowed, cubic yard	2 64
Culvert masonry, "	5 40
Paving	2 30
Cleaning and grubbing, per mile	307 00
Earth hauled, pr. 100 ft.	01½
Rock " " "	04½

6. That the total amounts of the estimates, as made by the
446 engineer, for said gradation, work, and labor, was one hundred and fifteen thousand two hundred and eighty $\frac{8}{10}\frac{2}{0}$ dollars, of which defendant paid, from time to time, in all the sum of seventy-nine thousand and four hundred dollars, in Henderson county bonds, at their par or face value, leaving a balance due plaintiffs, at the time of the completion of said work, of thirty-five thousand eight hundred and eighty $\frac{8}{10}\frac{2}{0}$ dollars, payable in said Henderson county bonds, at their par or face value as aforesaid, and the same is subject to a deduction of 33⅓ per cent., the bonds having been fixed at 66⅔ cts. on the dollar.

7. That the plaintiff, on the completion of the work aforesaid, demanded payment of said amount of thirty-five thousand eight hundred and eighty $\frac{8}{10}\frac{2}{0}$ dollars, in bonds as aforesaid, or their equivalent as aforeseid in cash; but the defendant refused, and still refuses and neglects, to comply with said reasonable demand, and the same is still due and unpaid, except $985.32, which defendant paid.

8. That plaintiffs further allege that the said Spartanburg and

Asheville railroad and all the premises aforementioned were,
447 at the time of the making of said contract of March 30th, 1876, and the performance of the work aforesaid, and until the filing of the said notice of lien hereinafter mentioned, *were* the property of the defendants.

9. That on the 14th day of June, 1878, and after performance of said contract, the plaintiffs duly filed with the clerk of the superior court of the county of Henderson, in which the said road partially lays, a notice of lien claimed upon said premises for the indebtedness aforesaid to the amount of twenty-two thousand four hundred and eighty-five $\frac{30}{100}$ dollars; which notice was duly verified and duly specified the amount of the claim, as above stated, to the amount aforesaid, and specified the defendant as the party against whom the claim was made and as the owner of said premises therein particularly described, identifying it as the premises described in this complaint.

Wherefore the plaintiffs pray judgment as follows:

1st. That they recover of the defendants the said sum of $22,935.23, with interest from 15th April, 1878, till paid.

448 2nd. That they have a lien upon the premises above described for the amount of twenty-two thousand four hundred and eighty-five $\frac{30}{100}$ dollars, with interest from the 15th day of April, 1878; and that said premises be sold and the proceeds applied to the payment of the amount due by virtue of said lien, with interest; and the surplus, if any, paid to defendant; and if there be any deficiency that the defendant pay the same; and, further, that plaintiff shall have leave to take out execution, if they shall so elect, to enforce said lien, as is provided by law in such cases; and they, without prejudice, to move for other and further process to enforce this judgment.

3rd. For costs of this action.

D. COLEMAN,
M. E. CARTER,
Atto's.

HENDERSON COUNTY, *ss:*

S. M. Rice, one of the plaintiffs above named, being duly sworn, says: I have heard read the foregoing complaint and know its contents; the same is true of my own knowledge, except as
449 to those matters therein stated on information and belief, and as to those I believe it to be true.

S. M. RICE.

Sworn and subscribed this the 5th day of June, 1879.

C. M. PACE, *Clerk.*

Superior Court. Spring Term, 1879.

NORTH CAROLINA, *Henderson County:*

S. M. RICE and R. L. COLEMAN, under the firm name of Rice & Coleman, pl'ffs,

vs.

THE SPARTANBURG & ASHEVILLE RAILROAD COMPANY, def't.

At a superior court held for the county of Henderson, at the court-house in Hendersonville, on the 2nd day of June, 1879, present and presiding, the Hon. J. C. L. Gudger, judge.

The summons in this action having been duly served upon the defendant corporation, and it appearing to the court that no
450 answer, plea, or demurrer has been filed, nor other defence made to the complaint, and that the complaint has been duly verified and filed; it is now, on motion of D. Coleman and M. E. Carter, counsel for the plaintiffs, adjudged that the plaintiffs do recover of the defendant, The Spartanburg and Asheville Railroad Company, the sum of twenty-four thousand four hundred and ninety-five dollars, with interest on twenty-two thousand four hundred and ninety-five dollars from the 2nd day of June, 1879, till paid, and costs to be taxed by the clerk. It is further adjudged that the plaintiffs are entitled to, and have a lien on, the defendants' railroad, The Spartanburg & Asheville railroad, as a security for the payment of the sum of twenty-four thousand and eighteen $\frac{6\,9}{1\,0\,0}$ dollars, with interest on $22,489.30 from the 2nd day of June, 1879, till paid, and it is ordered and adjudged that the plaintiffs have leave, at any time, to take out an appropriate execution to sell the defendants' said railroad, with a clause extending to the general property of the defendant, in case the proceeds of the sale of said railroad shall not
451 be sufficient to pay the full amount of this judgment. But the plaintiffs shall not be precluded from taking out such other lawful execution, or of applying to the court for any further process or order as may be necessary or appropriate to enforce this judgment.

J. C. L. GUDGER,
Judge Presiding.

STATE OF NORTH CAROLINA, *Henderson County:*

I, C. M. Pace, clerk of the superior court in and for the county and State aforesaid, do hereby certify that the foregoing is a true and perfect transcript of the record in said case, as appears from the records and papers on file in my office.

Witness my hand and official seal, at office in Hendersonville, this 12th day of June, A. D. 1879.

C. M. PACE, *C. S. C.*

452 STATE OF NORTH CAROLINA, *Henderson County:*

Be it remembered, that on the 5th Monday after the 4th Monday in April, 1879, being the 2nd day of June, 1879, a superior court

was opened and held for the county of Henderson, at the court-house in Hendersonville.

Present and presiding: The Hon. J. C. L. Gudger, judge of the 9th judicial district, when a suit was begun in the words, letters, and figures as follows, to wit:

Summons.

Henderson County, in the Superior Court.

THADDEUS COLEMAN, Plaintiff,

v.

THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY, Def't.

The State of North Carolina to the sheriff of Buncombe county, Greeting:

You are hereby commanded to summon The Spartanbug & Asheville Railroad Company, the defendant above named, if
453 it be found within your county, to be and appear before the judge of our superior court, at the next ensuing term thereof, to be held for the county of Henderson, at the court-house in Hendersonville, on the 5th Monday after the 4th Monday of April, A. D. 1879, and answer the complaint which will be deposited in the office of the clerk of the superior court of said county, within the first three days of the next term thereof; and let the said defendant take notice that if it fail to answer the complaint within that time, the plaintiff will take judgment against it for the relief demanded in the complaint.

Hereof fail not, and of this summons make due return.

Given under my hand and the seal of said court, this 23rd day of May, 1879.

[SEAL.]

C. M. PACE,
Clerk of the Superior Court of Henderson County.

And upon the back of said summons is the following:

I acknowledge service of the within writ, this 23rd May, 1879.

JAMES P. SAWYER,
Director S. & A. R. R.

454 Superior Court, Henderson County, June 4th, 1879.

RICE & COLEMAN

v.

THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY.

Ordered, on motion of counsel for pl'ffs, that the time for filing the plaintiff's complaint be extended until to-morrow, Thursday, June 5th, 1879, and that they have leave to file the same then as of to-day.

J. C. L. GUDGER, *Judge, &c.*

THADDEUS COLEMAN
v.
The S. & A. R. R. Co.

Same order for extending time and for filing complaint as in the above case.

J. C. L. GUDGER, *Judge, &c.*

NORTH CAROLINA, *Henderson County:*

Superior Court. Spring Term, 1879.

THADDEUS COLEMAN
v.
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY.

455 DAVID COLEMAN, being duly sworn, says:

That on the — day of May, 1879, being the day of which the acknowledgment of service of the summons in this cause, endorsed thereon, is dated, he presented the said summons, acting as attorney and agent of the plaintiff, to J. P. Sawyer, a director oft he defendant company, with the request and for the purpose of its being acknowledged and signed by the said J. P. Sawyer, who signed and acknowledged the service of the same in affiant's sight and presence, and returned the same to affiant.

D. COLEMAN.

Sworn to and subscribed before me, this the 6th day of June, 1879.

C. M. PACE, *Clerk.*

NORTH CAROLINA, *Henderson County:*

Superior Court. Spring Term, 1879.

THADDEUS COLEMAN
v.
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY.

456 & 457 The plaintiff, complaining, alleges:

1st. That the defendant is a corporation duly created by, and existing under, the laws of the respective States of North Carolina and South Carolina, under the name and style of the Spartanburg and Asheville Railroad Company.

2. That the plaintiff, at the request of the defendant, served the defendant as chief engineer from the 1st day of May, 1874, to the 1st day of October, 1878.

3. That for said services the defendant promised to pay the plaintiff twenty-five hundred (2,500) dollars per year.

4. That defendant paid to plaintiff from time to time, on account of said services, the total amount of seven thousand six hundred and seventy-seven $\frac{40}{100}$ dollars, leaving a balance due the plaintiff on account of said services of three thousand three hundred and sixty-four $\frac{26}{100}$ dollars on the 1st day of October, 1878, as more fully

appears by the account stated between the plaintiff and the defendant, hereto attached as a part of this complaint and marked "A,"

which said sum of three thousand three hundred and sixty-
458 four $\frac{26}{100}$ dollars is still due to the plaintiff and unpaid.

5. That on the said 1st day of October, 1878, the defendant was further indebted to the plaintiff in the sum of three hundred and forty-nine $\frac{71}{100}$ dollars, on account of sundry disbursements by the plaintiff for and at the request of the defendant, as more fully appears by the said account stated, marked "A," correcting a small error of addition apparent thereon, and the said sum is still due the plaintiff and unpaid.

6. That on the 1st day of October, 1878, an account was stated between the plaintiff and the defendant of and concerning the matters hereinbefore set forth, and upon such statement a balance of three thousand seven hundred and thirteen $\frac{97}{100}$ dollars, correcting the error aforesaid, was found to be due from said defendant to this plaintiff, and the defendant delivered to plaintiff a certificate, under its corporate seal, of said accounting and indebtedness, which is hereto attached, being the account marked "A," hereinbefore referred to and made a part of this complaint.

459 7. That no part of said sum of three thousand seven hundred and thirteen $\frac{97}{100}$ dollars, being the aggregate of all the indebtedness of defendant to plaintiff, hereinbefore set forth, has been paid, but is still due with lawful interest.

Wherefore the plaintiff demands judgment against the defendant for the sum of three thousand seven hundred and thirteen $\frac{97}{100}$ dollars, with interest thereon from the 1st day of October, 1878, and for costs.

D. COLEMAN, *Atto'y.*

HENDERSON COUNTY, *ss:*

Thaddeus Coleman, the plaintiff above-named, being by me duly sworn, says: I have heard read the foregoing complaint, and know the contents thereof; the same is true of my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe it to be true.

THADDEUS COLEMAN.

Sworn and subscribed before me, this the 5th day of June, 1879.

C. M. PACE, *Clerk.*

460 "A."

T. Coleman, chief engineer, in account with Spartanburg and Asheville Railroad Co.

By salary	from	May 1st, 1874, to Aug. 1, 1875		$3,125 00
"	"	Aug., 1875, to Aug., 1876		2,500 00
"	"	Aug., 1876, to Aug., 1877		2,500 00
"	"	Aug., 1877, to Aug., 1878		2,500 00
"	"	Aug., 1878, to Oct., 1878		416 66
				11,041 66

To cash paid on salary to Aug., 1875		$772 89
" " " Aug., 1875, to Aug., 1876		284 78
" " " Aug., 1876, to Aug., 1877		1,653 33
" " " Aug., 1877, to Aug., 1878		1,672 40
" amount pd. by Maj. Duncan & included in his ac		767 00
Balance due T. Coleman by S. & A. R. R.		3,364 26
		$11,041 66
Balance due T. Coleman as above stated		$3,364 26
Sundry engineer ac's reported to office by T. Coleman, as paid by him:		
Bill sundry items	$279 75	
" " "	40 90	
Miller ac	29 06	
		$327 71
Total balance		$3,691 97

I certify that the foregoing is a correct statement of ac-
461 count of T. Coleman, chief engineer, with S. & A. R. Road Co., to October 1st, 1879.

[SEAL.] WM. K. BLAKE,
Sec'ty and Treas'r.

Superior Court, Henderson County.

THADDEUS COLEMAN
v.
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY.

This action having been commenced on the 23rd day of May, 1879, by the personal service of the summons on the defendant, to wit, by a personal service of the summons on J. P. Sawyer, a director of the defendant company, and due proof having been made and filed of such service, and the complaint having been duly filed on Thursday of this term, in accordance with a leave of the court previously duly obtained and ordered, extending the time of filing the same to said day; and it further appearing to the court that no answer or demurrer has been received from, or filed by,
462 the defendant, now, on motion of M. E. Carter, the plaintiff's attorney, it is adjudged that the plaintiff, Thaddeus Coleman, recover of the defendant, The Spartanburg & Asheville Railroad Company, three thousand eight hundred and sixty-five dollars ($3,865.00), the sum demanded in the complaint, with interest on three thousand seven hundred and thirteen dollars and ninety-seven cents ($3,713.97), which is the principal sum hereby recovered, from the first day of this term until paid, together with —— dollars, the costs of this action, to be taxed by the clerk.

J. C. L. GUDGER,
Judge, Presiding.

STATE OF NORTH CAROLINA, *Henderson County:*

I, C. M. Pace, clerk of the superior court in and for the county and State aforesaid, do hereby certify that the foregoing is a true and perfect transcript of the record in said case as appears from the records and papers on file in my office.

Witness my hand and official seal, at my office in Hendersonville, this 13th day of June, A. D. 1879.

[SEAL.] C. M. PACE, *C. S. C.*

463 STATE OF NORTH CAROLINA, *Henderson County:*

Be it remembered that on the 5th Monday after the 4th Monday in April, 1879, it being the 2nd day of June, 1879, a superior court was opened and held for the county of Henderson, at the court-house in Hendersonville. Present and presiding the Hon. J. C. L. Gudger, judge of the 9th judicial district.

When a suit was brought in these words, letters, and figures, to wit:

Summons.

Henderson County, in the Superior Court.

R. W. ALLEN A. CANNON, and J. P. JOHNSON, Sen., Partners under the firm name of Allen, Cannon & Co., Plaintiff-,

v.

THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY, Def't.

The State of North Carolina to the sheriff of Henderson county, Greeting:

You are commanded to summon the Spartanburg and Asheville Railroad Company, the defendant above named, if it be found
464 within your county, to be and appear before the judge of our superior court, to be held for the county of Henderson, at the court-house in Hendersonville, on the 5th Monday after the 4th Monday in April, 1879, and answer the complaint, which will be deposited in the office of the clerk of the superior court of said county within the first three days of the next term thereof; and let the said defendant take notice that if it fail to answer said complaint within that time, the plaintiff will take judgment against it for the sum of two thousand seven hundred and ten $\frac{83}{100}$ dollars, with interest on two thousand seven hundred and ten $\frac{83}{100}$ dollars from the 1st day of January, 1877, to the day of payment.

Hereof fail not, and of this summons make due return.

Given under my hand and seal of said court, this 3d day of May, 1879.

C. M. PACE,
Clerk of Superior Court, Henderson County.

And upon the back of said summons is the following: Received May 3d, 1879. Served May 7th, 1879, by reading contents of the within to V. Ripley and G. W. Fletcher, directors of defendant.

465 (Cost $1.20.) J. WILLIAMS,
Sh'ff of Henderson County.

Service accepted at Asheville, N. C., May 3rd, 1879.

JAMES P. SAWYER,
Director S. & A. R. R. Co.

Complaint.

NORTH CAROLINA, *Henderson County:*

Superior Court, Spring Term, 1879.

R. W. ALLEN, A. CANNON, and J. P. JOHNSON, Sen., under the firm name of Allen, Cannon & Co., Pl'ffs,

v.

THE SPARTANBURG and ASHEVILLE RAILROAD COMPANY, Defendant.

The plaintiffs, complaining of the defendant, allege:

I. That the defendant is a railroad corporation, duly created and organized under and by virtue of the laws of the State of North Carolina and South Carolina, with power to sue and be sued, contract and be contracted with, and all other powers usually incident to such corporations.

466 II. That on the 30th day of March, 187[illegible] plaintiffs, under the firm name of Allen, Cannon & Co., entered into the contract and articles of agreement hereto attached, marked Exhibit "A," and made part of this complaint.

III. That the plaintiff, since the date of said "articles of agreement," have in all things fully complied on their part with the terms and provisions of said contract.

IV. That the defendant, the said The Spartanburg and Asheville Railroad Company, is justly indebted to the plaintiffs, under the firm name of Allen, Cannon & Co., in the sum of two thousand and seven hundred and ten $\frac{83}{100}$ dollars ($2,710.83), with interest on said sum from the 1st day of January, A. D. 1877.

V. That said sum of two thousand and seven hundred and ten $\frac{83}{100}$ dollars ($2,710.83), and interest as aforesaid, is due the plaintiffs for work done and material furnished by the plaintiffs to defendant, and accepted by said defendant under the contracts aforesaid, and constitutes the balance due plaintiff under said contract, as recognized and admitted by defendant.

467 Therefore, the plaintiffs demand judgment for the said sum of two thousand and seven hundred and ten $\frac{83}{100}$ dollars ($2,710.83), with interest thereon [at] 7 per cent. from the 1st day of January, 1877, until paid, and the costs of this action.

J. H. MERRIMON,
Plaintiff's Attorney.

A. Cannon and R. W. Allen, being duly sworn, says each for himself: I have heard read the foregoing complaint and know the contents thereof; the same is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters, I believe it to be true.

A. CANNON.
R. W. ALLEN.

Sworn to and subscribed, this 4th day of June, 1879.

C. M. PACE, *C. S. C.*

EXHIBIT A.

Spartanburg and Asheville Railroad Company.

Proposal.

The undersigned proposes to execute and complete, according to the specifications annexed hereto, the work named
468 in the following table at the prices opposite each job, respectively:

Section—From Butt Mountain Gap to Hendersonville.

Earth—Excavation, twenty five cents; and borrowing, twenty-five cents.

Hard material—At engineer's prices.

Loose rock—Seventy-five cents.

Solid rock—One $\frac{50}{100}$ dollars.

Allowance per cubic yard for every 100 over feet 100 average haul—On earth excavation and borrow, 1½ cts. for every additional 100 ft. over the first. On loose and solid rock, 4½ cents.

Square culverts—Six dollars.

Paving—Two $\frac{25}{100}$ dollars.

Remarks—Clearing; three hundred dollars per mile for an average width of 100 feet.

469 Articles of agreement, made and concluded this 30th day of March, in the year of our Lord one thousand eight hundred and seventy-six, between Allen, Cannon & Co., of the first part, and the Spartanburg and Asheville Railroad Company, of the second part. Whereas the party of the first part hath agreed, for and in consideration of the payments hereinafter mentioned, to undertake and complete the gradation of the road from Butt Mountain Gap to Hendersonville, according to the manner and conditions following, as far as the same are applicable thereto.

Now, this agreement witnesseth: That the said party of the first part doth hereby promise and agree with the said company that he, the said party of the first part, shall and will construct and complete, in the manner aforesaid, that part of the line of road extending from Butt Mountain Gap to Hendersonville, on or before the first day of October, 1877, and it is hereby agreed that the time herein stipulated shall be considered as of the essence of this agreement. In consideration whereof, the said Spartanburg and
470 Asheville Railroad Company do hereby agree with the said party of the first part, that the said company shall and will, for so doing and performing the work aforesaid, in the manner aforesaid, well and truly pay, or cause to be paid, to the said party of the first part, his executors or administrators, the prices respectively designated for each particular job in the preceeding proposal. The payments shall be made in the following manner: that is to say, during the process of the work and until it is com-

pleted, commencing soon after the first of April, 1876, there shall be a monthly estimate made by the aforesaid engineer of the quantity, character, and value of each species of work done pursuant to this contract.

The principal, assistant, or chief engineer shall examine, without delay, said monthly estimate, correct, if necessary, and underwrite his approval, and forward it to the secretary of the company. The sum appearing to be due for work performed and material furnished since the last estimate shall be paid the contractor, as follows:

Nine-tenths of this sum in bonds of the county of Hender-
471 son, at par value, and one-tenth to be placed to their credit on the books of the company until the completion of their contract. And no portion of the remaining $\frac{1}{10}$ part shall, under any circumstance, be paid until the contract shall be fulfilled on the part of the contractor, and the whole work delivered to the company in good order in pursuance thereof.

Within thirty days after the work shall have been completed, and so accepted by the said chief engineer, there shall be a final estimate made by the engineer of the quantity, character, and value of said work agreeable to the terms of this agreement, when the balance appearing to be due to the said party of the first part shall be paid to Allen, Cannon & Co. upon their giving a release under seal to the said company from all claims or demands whatsoever growing, in any manner, out of this agreement.

The work shall always be open to examination during their progress, by the president and directors and engineers. At the expiration of every month a report shall be made by the contractor to the

engineer of the average force of men, carts, &c., employed
472 upon the work for the preceeding month, according to such forms as shall be supplied by the said engineer. And it is further agreed that in the event the work shall not be commenced or prosecuted and completed, or if the contractor, on being required thereto by the engineer, shall fail or refuse to increase the force employed on the work herein contracted for, to such an extent as in the opinion of the said engineer shall be necessary to insure its completion in the stipulated time, or in case the contractor shall disobey any of the lawful written orders of the engineer, or shall violate any of the express conditions of this agreement, then on the certificate of the fact by the principal assistant engineer having the superintendence of the work, or by the chief engineer, either the president or the president and directors of the Spartanburg and Asheville Railroad Company, may declare this contract abandoned, and the said company shall therefore be exonorated from every obligation thence ensuing; and the reserved percentage on the contract price, as well as all materials furnished and work performed,

and upon which no estimate or payment may have been
473 made, shall become the right and property of the Spartanburg and Asheville Railroad Company in satisfaction for all damages they may have sustained by reason of the delinquency of the contractor; and the said company, by its proper officer, may hereafter agree with any other person for the execution of the un-

finished work in the same manner as if this contract had never been made.

And the said party of the first part hereby further agrees with said company, that should they determine to build bridges, culverts, walls, or other masonry, or do other work not hereinbefore enumerated, on the said section or sections, that the said party of the first part will perform, build, and complete the same as though said work had been enumerated in this agreement, and for the prices hereinbefore stipulated to be paid for similar kinds of work, and upon the same terms and conditions except with regard to the time of completing the same, which it is hereby agreed shall be extended at the discretion of the president and directors, when the limit fixed by them shall have the effect as though it were inserted in
474 this agreement. And it is further agreed between the parties that in lieu of the abandonment of the contract for failure to comply with the requisition of the engineer to place an adequate force upon the road to insure its completion in the time stipulated, the president and directors may place a sufficient force upon said work at the expense of the contractor.

And it is further agreed that for any of the causes before assigned the president, or the president and directors, may abandon any portion of the work herein contracted for, such portion to be subject to the same forfeiture and control of the company as if the whole contract was abandoned.

To prevent all dispute it is hereby mutually agreed that the chief engineer shall in all cases determine the amount and quantity of the several kinds of the work which are to be paid for under this contract, and the amount of compensation at the rates herein provided for, and also that the said chief engineer shall in all cases decide every question which can or may arise relative to the execution of this contract, on the part of said contractor, and his
475 estimate shall be final and conclusive.

In witness whereof the said parties of the first part do hereunto set their hands and affix their seals, and also the Spartanburg and Asheville Railroad Company have hereunto caused their president, D. R. Duncan, to subscribe his name and affix their corporate seal the day and year above written.

R. W. ALLEN, [SEAL.]
A. CANNON, [SEAL.]
J. P. JOHNSON, SEN., [SEAL.]
D. R. DUNCAN,

As President of the Spartanburg and Asheville Railroad Company.
By Order of the President and Directors in behalf of the Company.

Judgment for want of an Answer.

Superior Court. Spring Term, 1879.

STATE OF NORTH CAROLINA, *Henderson County:*

R. W. ALLEN, A. CANNON AND J. P. JOHNSON, under the firm name of Allen, Cannon & Co., Pl'ff.,

v.

THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY, Def't.

476 The summons in this action having been duly served, the sevice having been accepted by Jas. P. Sawyer, and served upon V. Ripley and G. W. Fletcher, directers of said company, and it appearing that no answer has been filed to the complaint herein, and no defence made, it is now, on motion of James H. Merrimon, counsel for the plaintiff, adjudged that the plaintiff recover of the defendant, The Spartanburg and Asheville Railroad Company, the sum of two thousand and seven hundred and ten $\frac{83}{100}$ ($2,710.83), with interest at the rate of 7 per cent. per annum from the first day of January, 1877, until paid, and the costs of this action

J. C. GUDGER,
Judge Presiding.

Costs of action	$9 55
This trans., cost, & seal,	2 50
	$12 05

STATE OF NORTH CAROLINA, *Henderson County:*

477 I, C. M. Pace, clerk of the superior court in and for the county of Henderson, and State of North Carolina, do hereby certify that the foregoing contains a full, true, and perfect transcript of the record in the case to which it refers (Allen, Cannon & Co. *vs.* The Spartanburg & Asheville Railroad Co.), as appears from the records and papers on file in my office.

In witness whereof, I have hereunto set my hand and official seal, at office, in Hendersonville, this 26th day of September, A. D. 1879.

[SEAL.] C. M. PACE, *C. S. C.*

478 "EXHIBIT A."

Spartanburg and Asheville R. Road Co. in account with E. Clayton, contractor, (under contract of E. Clayton & Co., South Carolina Divis.):

By total final estimate (E. Clayton)		$27,864 66
" E. Clayton, proportional part sub cont. work		3,077 36
		$30,942 02
Less stock on E. Clayton, estimate	$5,572 93	
" " " subcontractor's estimate	2,299 41	7,852 34
		$23,089 68

To am't pd. by E. M. Clayton, agt. of E. Clayton & Co., to E. Clayton, to Aug't, 1877	$8,202 72
To amt. pd. by ditto on profits of sub cont	264 62
" " " " W. K. Blake	12,082 15
" bal. due E. Clayton	2,540 19
	$23,089 68

The above is a correct statement of the account of E. Clayton with the S. & A. R. Road Co. under the contract of E. Clayton & Co., So. Car. Division.

WM. K. BLAKE,
Sec'y & Treas'r.

Of the above bal. of 2,540.19 E. Clayton is due W. K. Blake, agt. of E. Clayton & Co., ⅓ of $216.59, viz., $72.19.

479 "EXHIBIT B."

Spartanburg & Asheville R. Road Co., in account with E. Clayton, contractor. Packolet Division:

By total final estimate (E. Clayton) $56,596.48		56,596 48
To am't p'd by W. K. Blake to Aug't, 1876	11,114 80	
" " " " Aug. '76, to Aug. '77	20,016 12	
To am't p'd by W. K. Blake Aug., '77, to Aug., '78	4,150 60	
To am't p'd by W. K. Blake since Aug., '78,	22 70	
To vouchers in hand of president	166 34	
To bal. due E. Clayton on Packolet div.	21,125 95	
		56,596 48

The above is a correct statement of the account of E. Clayton with the S. & A. R. Road Co., under contract for Packolet division.

WM. K. BLAKE,
Sec'y & Treas'r.

"EXHIBIT C."

Spartanburg & Asheville R. Road Co.

To E. Clayton, Dr.:

For amounts due by S. & A. R. Road Co. to sub-contractors for work on S. C. division, said amounts in form of drafts, accepted by sec't'y & Treas'r on settlement with the sub-contractors in favor of E. Clayton, as follows:

480	Accepted draft from J. A. McDowell	$100 00
	" " " T. T. Patton	84 95
	" " " W. G. Corpening	50 00
		$234 95

amounting to two hundred & thirty-four and $\frac{95}{100}$ dollars.

WM. K. BLAKE,
Sec't'y & Treas'r.

Superior Court. Fall Term, 1879.

THE STATE OF NORTH CAROLINA, *Polk County:*

E. CLAYTON, Plaintiff,

v.

THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY, Defendants.

The plaintiff, by his amended complaint, alleges for a first cause of action.

1. That the defendant is a corporation duly created and organized by and under the laws of the States of North Carolina and South Carolina with the usual powers and duties of corporation,
481 with power to make contracts and be sued.

2. That on the — of ——, 1874, the said defendant entered into a contract with the plaintiff and M. J. Fagg and W. P. Fortune, under the firm name of E. Clayton & Co., by which the said E. Clayton & Co. agreed with said defendant to grade and make certain portions of defendant's railroad, leading from the town of Spartanburg, in the State of South Carolina, to the town of Asheville, in the State of North Carolina, and the said defendant agreed and promised to pay to the said firm of E. Clayton & Co. for said work, the estimate of the same to be made by the chief engineer of said defendant's company.

3. That the said firm of E. Clayton & Co., under the contracts aforesaid, agreed to grade and make what was termed the South Carolina division of the work on said defendant's road, and the plaintiff and M. J. Fagg and W. P. Fortune took, each separately, portions of the work on said South Carolina division, and graded and made their said several portions, and the chief engi-
neer of said defendant's company, from time to time, in the
482 progress of said work, made estimates separately for the plaintiff and the said M. J. Fagg & W. P. Fortune, and reported said estimates to the said defendant company, which were accepted by said company, and are now in said company's possession.

3. That by an arrangement with said defendant company, and the said firm of E. Clayton & Co., the work and estimate of the same by the chief engineer of said company, of each member of said firm of E. Clayton & Co., rep't separate, and was to be paid for by said company to the said several members of said firm.

4. That Exhibit A, hereto attached and made part of this complaint, shows the state of the account between the plaintiff and the said defendant for work done by plaintiff on the South Carolina division of the work on said defendant's railroad, and the value of the work done by plaintiff on said division; and the plaintiff alleges that said defendant is indedbted to him on account of said work, and by the arrangements between said defendant and himself and M. J. Fagg and W. P. Fortune the sum of two thousand five hundred and forty $\frac{19}{100}$ dollars, with interest on said sum from
483 the 31st day of August, 1875, till paid.

5. That the plaintiff fully complied with his part of said contract.

For a second cause of action—

1. That the defendant is a corporation duly created and organized under and by virtue of the laws of the State- of South Carolina and North Carolina with usual powers and duties of corporations, with power to make contracts and be sued.

2. That on the 15th day of Aug't, 1875, the said defendant made a contract with the plaintiff — should grade and make a part of defendant's railroad leading from the town of Spartanburg, in the State of South Carolina, to the town of Asheville, in the State of North Carolina, on what was called the Packolet division of the work on said defendant's road, and the said defendant should pay to the plaintiff for said work, the estimate of the sum to be by the chief engineer of said company.

3. That plaintiff, in pursuance of said contract, graded and made said portion of said defendant's railroad on said Packolet division of the work on said road; that the said company's chief
484 engineer, from time to time in the progress of said work, made estimates of said work, and reported the same to said company, and the said company accepted the same, & has the said estimates now in possession, as plaintiff is informed and believes; that the said plaintiff complied in all respects with the contract with said company to grade and make said portions of said Packolet division of the work on said company's road, and the said company accepted and took possession of said work.

4. That Exhibit B, hereto attached and made part of this complaint, shows the state of the account between the plaintiff and the defendant for the work done by plaintiff on the Packolet division of the work on said defendant's railroad, and the value of said work; and the plaintiff alleges that said defendant is indebted to him for said work in the sum of twenty-one thousand one hundred and twenty-five $\frac{92}{100}$ dollars, with interest on the same from the 3rd day of Oct., 1877.

For a third cause of action—

1. That the defendant is a corporation with power to contract and be sued.

485 2. That the defendant is indebted to the plaintiff in the sum of two hundred and thirty-four $\frac{95}{100}$ dollars, as per account hereto attached, marked C, and made a part of this complaint.

Therefore the plaintiff demands judgment for the sum of twenty-three thousand nine hundred and one $\frac{56}{100}$ dollars, and interest thereon from —— day of ——, 187–, and cost of action.

J. H. MERRIMON, *Pl'ff's Att'y.*

NORTH CAROLINA, *Buncombe County:*

Be it remembered that on this 20th day of ——, A. D. 1879, before me, E. W. Herndon, clerk of the superior court of Buncombe

county, personally came E. Clayton, the plaintiff in the above and foregoing action, to me personally known, and, being by me duly sworn, says that the facts stated in his said complaint are true of his own knowledge, except as to matters stated on information and belief, and, as to those matters, he believes them to be true.

E. CLAYTON.

486 Subscribed and sworn to before me, given under my hand & seal of office at Asheville, this 29th Nov. 1879.

E. W. HERNDON,
Clerk Superior Court Buncombe County.

POLK COUNTY, *North Carolina:*

I, R. S. Abrams, clerk of the superior court, do hereby certify that the foregoing is a true copy now on file in my office, in the case to which it refers.

In witness whereof, I have hereunto set my hand and seal of office at Columbus, this 26th day of Jan'y, A. D. 1880.

[SEAL.] R. S. ABRAMS,
Clk Superior Court for Polk County.

487 *Summons.*

POLK COUNTY:

In the Superior Court.

JOHN GARRISON, Plaintiff,
against
THE SPARTANBURG & ASHEVILLE RAILROAD COMPANY.

The State of North Carolina, to the sheriff of Polk county, Greeting:

You are hereby commanded to summon The Spartanburg and Asheville Railroad Company, the defendants above named, if they be found within your county, to be and appear before the judge of our superior court, at the court to be held for the county of Polk, at the court-house in Columbus, on the 8th Monday after the 4th Monday of September next (1878), and answer the complaint which will be deposited in the office of the clerk of the superior court of said county, within the first three days of the next term thereof, and let the said defendants take notice that if they fail to answer the said complaint within that time, the plaintiff will take judgment against them for the sum of eight thousand dollars, with interest on eight thousand dollars from the 15th day of February, 1878, till paid, and costs of suit.

488 Herein fail not; of this summons make due return.

Given under my hand and seal of said court this 10th day of August, 1878.

R. S. ABRAMS,
Clerk of the Superior Court of Polk County.

Bond.

We acknowledge ourselves bound unto the Spartanburg & Asheville Railroad Company, the defendants in this action, in the sum of two hundred dollars, to be void, however, if the plaintiff shall pay to the defendants all such costs as the defendants may recover of the plaintiff in this action.

Witness our hands and seals this 10th day of August, A. D. 1878.

JOHN GARRISON. [SEAL.]
T. T. BALLENGER. [SEAL.]
J. C. McFARLAND. [SEAL.]

On the back of the above summons *is* the following endorsements, to wit:

John Garrison *vs.* The Spartanburg & Asheville Railroad Company. Summons. Returnable to Fall term, 1878, of the
489 superior court of Polk county. Received 19th August, 1878. Served September 2nd, 1878. By reading the contents of the within summons to D. R. Duncan, president of the Spartanburg & Asheville Rail R.: Fee 60 cts. O. I. Nelson, sheriff Polk county. Morris & Montgomery, pl'ff's att'oys.

STATE OF NORTH CAROLINA:

Superior Court, Polk County.

JOHN GARRISON, Plaintiff,
v.
THE SPARTANBURG & ASHEVILLE RAILROAD CO., Def't.

The plaintiff alleges that the defendant above named is a body politic, duly incorporated, chartered, and organized under and by virtue of the laws of the States of South Carolina and North Carolina, and that the defendant was fully authorized by law to make contracts on the 1st day of December, 1876, and on said day, through its duly and legally authorized agent, did make with the plaintiff above named a contract in writing, a copy of which is an-
490 nexed to this complaint marked "A," and is part of the same.

II. That the plaintiff complied with and duly performed on his part all the stipulations of said agreement, and the defendant accepted the said trestles and promised to pay the plaintiff for the same the sum of five thousand seven hundred and six $\frac{65}{100}$ dollars, the amount due plaintiff according to engineer's estimate. That the defendant, in part performance of said agreement has paid plaintiff the sum of fifty-three hundred and forty-nine $\frac{14}{100}$ dollars, and the remainder, to wit, the sum of three hundred and fifty-seven $\frac{51}{100}$ dollars, is due the plaintiff, with interest from the 1st day of August, 1877, the date when the same was payable. The plaintiff further alleges that on the 2nd day of June, 1877, he further contracted with the defendant above named, who was a corporation duly chartered and organized, as before alleged, to furnish the material and erect for said defendant a trestle over Mill Creek, known as Mill Creek Trestle; and for framing and erecting said trestle out of said material

the defendant agreed to pay plaintiff fifteen dollars per thou-
491 sand for round lumber and twenty dollars per thousand for square lumber.

In pursuance of said agreement, the plaintiff did erect and frame said trestle, and furnish for the same 52,554 feet of round lumber and 97,656 feet of square lumber and 1,487 feet of gang-way plank, and also built the rock foundation for said trestle, and the defendant accepted said trestle and promised to pay plaintiff two thousand nine hundred and six $\frac{30}{100}$ dollars for the same upon its completion, on the 18th February, 1878.

That no part of said sum has been paid, and the same is still due plaintiff, with interest from the 18th February, 1878.

That plaintiff has demanded payment of said sum due him previously to the commencement of this proceeding, and the defendant has failed to pay the same, except as stated above. That on the 2nd day of April, 1878, and after the performance of said contract by the plaintiff, and within the time prescribed by law, the plaintiff duly filed in the office of the clerk of the superior court of Polk county a mechanic's lien, which was on that day filed and recorded as the law directs, a copy of which lien is hereto annexed and
492 marked "B," and is a part of this proceeding. That the plaintiff is a resident of Polk county; that he furnished the material specified in the notice of lien filed, and erected said trestles out of said material, and that said trestles are known as Vaughn's Creek Trestle and Mill's Creek Trestles, and are situated in the said county of Polk. That the said trestles and the land upon which they are erected are the property of the defendant, and that the defendant is the owner of the track, road-bed, depot lands, rights of way, and easements mentioned in said notice.

That the State of North Carolina did not contribute or appropriate any money for the said Spartanburg and Asheville Railroad, and has no interest in the same.

Wherefore, demands judgment for the amount above set forth, with interest from the times mentioned, and that the property mentioned in his said notice of lien may be sold to satisfy said judgment and for such other and further relief as he may be entitled to, and for costs.

MORRIS & MONTGOMERY, *Att'ys.*

JOHN GARRISON, being sworn, says: That the facts set forth in the foregoing as of his own knowledge are true, and those not so stated he believes to be true.

493 JOHN GARRISON.

Subscribed and sworn to before me, December 9th, 1878.

R. S. ABRAMS, *Clerk.*

"A."

Articles of agreement made and concluded this day, December 1st, 1876, between John Garrison, of the first part, and the Spartanburg and Asheville Railroad Company, of the second part. Wit-

nesseth, that the party of the first part promises to and agrees with, the said company that for and in consideration of the payment hereinafter mentioned he shall and will furnish all the necessary material and construct thereof the trestle at Vaughn's creek, not including the foundation of the same, on the line [of] said company's road, according to the bills and specifications and directions of the engineer of the same, and will complete said trestle on or before the day it may be reached by the track of said company, due notification being given him from time to time of the progress of said track.

In consideration of this agreement the party of the second part do hereby agree with the party of the first part that the said
494 company shall and will for so doing and performing the work aforesaid, in the manner aforesaid, pay or cause to be paid to the party of the first part, his executors or administrators, each month during the progress of the work, according to the engineer's estimate, seventeen dollars per thousand feet B. M. for materials delivered and eight dollars per thousand feet B. M. for framing the same, four-fifths of said engineer's estimate to be paid in cash and the remaining one-fifth to [be] reserved until the final estimate, said final estimate to be made within thirty days after the completion of the work, and the acceptance of the same by the chief engineer of the company; when the balance appearing to be due the party of the first part shall be paid to him upon his giving a release under seal to said company from all claims or demands whatsoever growing in any manner out of this agreement.

It is further understood, and it is agreed, that no payment shall be claimed for work done nor any estimate given until at least one-half of the material required for the whole trestle shall have been hewn or sawn. In consideration of a faithful compliance with this agreement by the party of the second part, the party of the
495 first part further covenants and agrees that said company may withhold from his final estimate the sum of five hundred dollars, said sum of five hundred dollars to be placed to his credit on the books of the company as stock in the Spartanburg and Asheville railroad, and scrip to be issued to him for the same.

In witness whereof, the party of the first part and the chief engineer of the Spartanburg and Asheville Railroad Company, by authority of the president of the same, for the party of the second part do hereto set their hands and affix their seals.

[SEAL.] T. COLEMAN,
Chief Engineer of Spartanburg & Asheville R. R. Co.

"B."

POLK COUNTY:

Superior Court.

JOHN GARRISON
vs.
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY. } Mechanics' Lien.

The above-named John Garrison files his notice and claim

496 of lien in the office of the superior court clerk for Polk county; said claim is for work and labor done and materials furnished for the said Spartanburg and Asheville Railroad Company, upon the Spartanburg and Asheville railroad, to the amount of $8,612.95; said work and labor and materials were performed and furnished in the erection and construction of two railroad trestles on the aforesaid railroad in Polk county, known as the Vaughn creek trestle and Mill creek trestle. The claim for work and labor and materials performed and furnished on the former, namely, Vaughn creek trestle, amounts to $5,706.65, of which there is $1,200 still due. The claim for work and labor and materials performed and furnished on the latter, namely, Mill creek trestle, amounts to $2,906.36.

The following is a bill or statement of the materials furnished in the erection and construction of the Vaughn creek trestle, to wit:

228,266 ft. B. M. lumber, at $25 ..... $5,706.65

The following is a bill or statement of the materials furnished in the erection and construction of the Mill creek trestle, to wit:

497	52,554, B. M., ft. round lumber, at $15	$788	31
	97,656 " " square lumber, at $20	$1,953	12
1,487	" " gangway plank, at $10	14	87
	Making foundation, including masonry, &c., at Mill creek, February 18th, 1878	150	00
		$2,906	30

The said John Garrison claims his lien on the aforesaid Spartanburg and Asheville railroad, and therefore requires the superior court clerk for Polk county to enter and record the above as a lien on the aforesaid trestles, road, its track, road-bed and depot lands, its tenements, hereditaments, rights of way, and easements.

April 2d, 1878.

(Signed) JOHN GARRISON.

Sworn and subscribed before me, this 2d day of April, 1878.

R. S. ABRAMS,
Clk Superior Court for Polk County.

Recorded in Lien Book on the 2d day of April, 1878.
156–'7. R. S. ABRAMS, *Clk.*

STATE OF NORTH CAROLINA, *Polk County:*

I, R. S. Abrams, clerk of the superior court for Polk county
498 and the State aforesaid, do hereby certify that the foregoing contains a full and true copy of the summons & complaint in an action pending in said court between John Garrison, plaintiff, and the Spartanburg and Asheville Railroad Company, def't, filed in my office. I further certify that the exhibit, marked "B," of the foregoing is a true and perfect copy of a notice of a mechanic's lien

filed by John Garrison, and recorded in my office in the lien book for Polk county, against the Spartanburg and Asheville Railroad Company.

In attestation whereof, I have hereunto signed my name and affixed the seal of said court, at office, in Columbus, this 10th day of October, A. D. 1879.

[SEAL.]

R. S. ABRAMS,
Clerk Superior Court, Polk County.

499 STATE OF NORTH CAROLINA, *Henderson County:*

Be it remembered, that on the 5th Monday after the 4th Monday in April, 1879, it being the 2nd day of June, A. D. 1879, a superior court was opened and held for the county of Henderson, at the court-house in Hendersonville, present and presiding the Hon. J. C. L. Gudger, judge of the 9th judicial district, when a suit was begun in these words, lette-s and figures, to wit:

Summons.

HENDERSON COUNTY.

In the Superior Court.

GEO. C. PERRIN
v.
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY.

State of North Carolina to the sheriff of Henderson county, Greeting:

You are hereby commanded to summons The Spartanburg and Asheville Railroad Company, if it be found in your county, to be and appear before the judge of our superior court, to be held
500 for the county of Henderson, at the court-house in Hendersonville, on the 5th Monday after the 4th Monday in April, 1879, and answer the complaint which will be deposited in the office of the clerk of the superior court of said county within the first three days of the next term thereof; and let the said defendant take notice, that if it fail to answer said complaint within that time the plaintiff will take judgment against it for one thousand two hundred fifty-eight $\frac{74}{100}$ dollars, with interest on eleven hundred and eighteen $\frac{57}{100}$ dollars from the 26th day of June, 1879.

Hereof fail not, and of this summons make due return.

Given under my hand and seal of said court, this the 21st day of May, 1879.

C. M. PACE,
Clerk Superior Court, Henderson County.

And upon the back of said summons is the following endorsement, to wit:

Received May 21st, 1879. Served May 21st, 1879, by reading contents to V. Ripley, a director of defendant Co. J. Williams, sheriff Henderson county.

501 *Complaint.*

NORTH CAROLINA, *Henderson County:*

Superior Court. Spring Term, 1879.

GEO. C. PERRIN, Plaintiff,

v.

THE SPARTANBURG & ASHEVILLE RAILROAD COMPANY, Def't.

The plaintiff alleges:

I. That the defendant, The Spartanburg and Asheville Railroad Company, is [a] railroad corporation, duly created and organized under and in pursuance of laws of North Carolina and of South Carolina, with all the powers usually incident to such corporations, with power to contract and be contracted with, sue, and be sued, &c.

II. That prior to August, 1875, the defendant corporation contracted with the plaintiff for his services as assistant engineer of said company, and that under said contract the plaintiff rendered services to said defendant corporation until October, 1878, and the said corporation is justly indebted to the plaintiff for such services

502 in the sum of eleven hundred and eighteen $\frac{57}{100}$ dollars principal money, as appears from the certificate of the secretary and treasurer hereto annexed, marked "A," and made part of this complaint, and one hundred and forty $\frac{17}{100}$ dollars interest on said principal.

III. That no part of said sum has been paid.

Therefore, the said plaintiff demands judgment for the sum of twelve hundred and fifty-eight $\frac{74}{100}$ dollars, with interest on eleven hundred and eighteen $\frac{57}{100}$ dollars from the 26th day of June, 1879, until paid, and costs of this action.

J. H. MERRIMON,
Plaintiff's Attorney.

Geo. C. Perrin, the plaintiff in the above-entitled action, maketh oath and says: That I have heard read the foregoing complaint, and know the contents thereof; the same is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters I believe it to be true.

GEO. C. PERRIN.

503 Sworn to and subscribed before me, this 4th day of June, 1879.

C. M. PACE, *Clerk.*

"A."

Geo. C. Perrin, Assistant Engineer, in Account with Spartanburg and Asheville R. Road Co.

By bal. due on salary to Aug., 1875	$200 00
" salary from Aug., 1875, to Aug., 1876	645 00
" " Aug., 1876, to Aug., 1877	780 00
" " Aug., 1877, to Aug., 1878	585 00
" " May, 1878, to Oct., 1878	500 00
	$2,710 00
To cash paid from Aug., 1875, to Aug., 1876	$450 00
" " " Aug., 1876, to Aug., 1877	450 00
" " " Aug., 1877, to Aug., 1878	225 00
" " " Aug., 1878, to Oct., 1878	116 43
Am't paid by Maj. Duncan & included in his acc't	350 00
Bal. due Geo. C. Perrin by S. & A. R. R. Co	1,118 57
	$2,710 00

I certify that the foregoing is a correct statement of account of Geo. C. Perrin, ass. eng., with the S. & A. R. Road Co. to Oct., 1878.

WM. K. BLAKE,
Sec't'y & Treas'r.

504 *Judgment for Want of an Answer.*

THE STATE OF NORTH CAROLINA, *Henderson County:*

Superior Court. Spring Term, 1879.

GEO. C. PERRIN, Pl'ff,

vs.

THE SPARTANBURG AND ASHEVILLE R. R. Co., Def't,

The summons in this action having been duly served upon the defendant corporation, and it appearing that no answer has been filed or other defence made to the complaint herein—

It is now, on motion of James H. Merrimon, counsel for plaintiff, adjudged that the plaintiff do recover of the defendant, The Spartanburg and Asheville Railroad Company, the sum of twelve hundred and fifty-eight dollars and $\frac{74}{100}$ ($1,258$_{100}^{74}$), with interest on eleven hundred and eighteen dollars fifty-seven cents ($1,118 57 cts.) from the 2nd day of June, 1879, until paid, and costs of this action..

J. C. L. GUDGER,
Judge Presiding.

Costs of action	$9 75
This trans., certif. & seal	2 00
	$11 75

505 STATE OF NORTH CAROLINA, *Henderson County:*

I, C. M. Pace, clerk of the superior court in and for the county

and State aforesaid, do hereby certify that the foregoing contains a full, true, and perfect transcript of the record in the case to which it refers, as appears from the records and papers on file in my office.

In witness whereof, I have hereunto set my hand and official seal, at office, in Hendersonville, this 26th day of September, A. D. 1879.

[SEAL.] C. M. PACE, *C. S. C.*

506 STATE OF NORTH CAROLINA, *Henderson County:*

Superior Court.

Be it remembered that [on] the 3d day of September, 1879, a transcript was returned into court in these words, lette-s, and figures, to wit:

NORTH CAROLINA, *Henderson County:*

Justice Court. Before M. M. Patton, J. P., Sep. 3d, 1879.

GOODWIN & DAVIS

vs.

THE SPARTANBURG AND ASHEVILLE RAILROAD CO.

It is adjudged that the plaintiff have judgment against defendants for the sum of two hundred dollars, to bear interest from the 25th May, 1878. and cost of action, to be taxed.

This judgment given for supplies furnished to A. Tanner, superintendent.

I, M. M. Patton, the justice by whom the judgment was rendered in the above-entitlon action, do certify that the foregoing is a true transcript of said judgment as entered by me on my docket at the date thereof, September 3rd, 1879.

M. M. PATTON *J. P.*

To clerk superior court, Henderson county.

507 On the 3d day September, 1879, said judgment was docketed on the judgment docket as follows, to wit:

Judgment from Justice Court. Docketed 3d day of September, 1879.

GOODWIN & DAVIS

v.

THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY.

Judgment $200.00, with interest from the 26th May, 1878.

Bill of Costs.

Cl'k	Pace, judgment	$1 00
"	docketing	25
"	execution	35
"	ret. a	10
		$1 70
M. M. Patton, J. P., to	pl'ff	70
Sh'ff J. S. Rhodes to	do.	60
		$3 00

STATE OF NORTH CAROLINA, *Henderson County:*

I, C. M. Pace, clerk of the superior court in and for said county and State, do hereby certify that the foregoiug contains a full, true, and perfect transcript of the record in the case to which it
508 refers (Goodwin & Davis *vs.* The Spartanburg & Asheville Railroad Company), as appears from the records and papers on file in my office.

In witness whereof, I have hereunto set my hand and official seal, at office, in Hendersonville, this 26th September, A. D. 1879.

[SEAL.] C. M. PACE, *C. S. C.*

509 STATE OF NORTH CAROLINA, *Henderson County.*

Superior Court.

Be it remembered that on the 19th day of August, 1879, a transcript was returned into court in these words, letters, and figures, to wit:

Henderson County. Before M. M. Patton, J. P.

C. W. PEARSON

v.

THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY.

It is adjudged that plaintiff have judgment against the defendant for the sum of ninety-eight $\frac{90}{100}$ dollars, with interest from the 19th of August, 1879, and costs of action to be taxed.

I, M. M. Patton, before whom judgment was rendered in the above-entitled action, do certify that the above is a true transcript of said judgment, as entered by me on my docket at the date thereof, August 19th, 1879.

M. M. PATTON, *J. P.*

To superior court, Henderson county.

On the 19th day of August, 1879, the said judgment was docketed on the judgment docket of the superior court for said county,
510 and stands as follows:

Judgment from Justice Court. Docketed 19th August, 1879.

C. W. PEARSON

vs.

THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY.

Judgment ninety-eight $\frac{90}{100}$ dollars, with interest from the 19th August, 1879, and costs of action.

Bill of costs.

Cl'k C. M. Pace, judgment		$1 00
" "	docketing	25
" "	execution	35
" "	return	10
		$1 70
M. M. Patton, J. P.		70
Sh'ff J. L. Hollingsworth		90
		$3 00

STATE OF NORTH CAROLINA, *Henderson County:*

I, C. M. Pace, clerk of the superior court in and for the county and State aforesaid, do hereby certify that the foregoing contains a full, true, and perfect transcript of the record in the case to which it refers (C. W. Pearson *vs.* The Spartanburg and Asheville Railroad Company), as appears from the records and papers on file in my office.

511 In witness whereof, I have hereunto set my hand and official seal, at office, in Hendersonville, this 26th September, 1879.

C. M. PACE, *C. S. C.*

512 STATE OF NORTH CAROLINA, *Henderson County:*

Superior Court.

Be it remembered that on the 16th day of September, 1879, a transcript was returned into court in these words, letters, and figures, to wit:

Henderson County Justice Court. Before M. M. Patton, J. P., September, 1879.

L. J. PACE

vs.

THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY.

It is adjudged that plaintiff have judgment against defendants for the sum of fifty-six $\frac{20}{100}$ dollars ($56.20), to bear interest from the 16th September, 1879, and cost of action, to be taxed.

M. M. PATTON, *J. P.*

I, M. M. Patton, the justice by and before whom judgment was rendered in the above-entitled action, do certify that the foregoing is a true transcript of said judgment as entered by me in my docket, at the date thereof, September 10th, 1879.

M. M. PATTEN, *J. P.*

To clerk superior court, Henderson county.

513 On the 16th day of September, 1879, the said judgment was docketed on the judgment docket of the superior court of said county, as follows:

Judgment from Justice's Court. Docketed 16th day of September, 1879.

L. J. PACE

vs.

THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY.

Judgment, fifty-six $\frac{20}{100}$ dollars, with interest on the same from the 16th September, 1879.

Bill of Cost.

Cl'k, C. M. Pace, judgment	$1 00
" " " docketing	25
" " " execution	35
" " " return	10
	$1 70
M. M. Patten, J. P.	70
Sh'ff, T. J. Rickman	60
	$3 00
Cl'k, C. M. Pace, trans. and seal	75
	$3 75

STATE OF NORTH CAROLINA, *Henderson County:*

I, C. M. Pace, clerk of superior court in and for the county and State aforesaid, do hereby certify that the foregoing contains
514 a full, true, and perfect transcript of the record in the case therein stated (L. J. Pace against The Spartanburg and Asheville Railroad Company), as appears from the record and papers on file in my office.

In witness whereof I have hereunto set my hand and official seal, this 26th day of September, A. D. 1879.

[SEAL.] C. M. PACE, *C. S. C.*

515 STATE OF NORTH CAROLINA, *Henderson County:*

Be it remembered that on the 5th Monday after the 4th Monday in April, 1879, it being the 2d day of June, 1879, a superior court was opened and held for the county of Henderson. Present and presiding, the Hon. J. C. L. Gudger, judge of the 9th judicial district, when a suit was begun in these words, letters, and figures, to wit:

Summons.

HENDERSON COUNTY:

In the Superior Court.

H. H. GRAMLIN
against
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY.

State of North Carolina to the sheriff of Henderson county, Greeting:

You are hereby commanded to summon The Spartanburg & Asheville Railroad Company, the defendant above named, if it be found in your county, to be and appear before the judge of our superior court at the court to be held for the county of Henderson, at
516 the court-house in Hendersonville, on the 5th Monday after the 4th Monday in April, 1879, and answer the complaint which will be deposited in the office of the clerk of the superior court of said county within the first three days of the next term *term* thereof. And let said defendant take notice that if it fail to answer said complaint within that time the plaintiff will take judgment against it for twenty-nine hundred and ninety-one $\frac{37}{100}$ dollars, with interest in the sum of twenty-eight hundred and twenty-four $\frac{80}{100}$ dollars from the 2nd day of June, 1879, till paid.

Hereof fail not, and of this summons make due return.

Given under my hand and the seal of said court, this the 21st day of May, 1879.

C. M. PACE,
Clerk Superior Court, Henderson County.

And upon the back of said summons is the following endorsement, to wit: Received, May 21st, 1879. Served, May 21st, 1879, by reading contents to V. Ripley, a director of defendants Co. J. Williams, sheriff of Henderson county.

517 *Complaint.*

NORTH CAROLINA, *Henderson County:*

Superior Court. Spring Term, 1879.

H. H. GRAMLING, Plaintiff,
against
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY, Defendant.

The plaintiff alleges—

I. That the defendant, The Spartanburg and Asheville Railroad Company, is a railroad corporation duly created and organized under and in pursuance of laws of the State of North Carolina and South Carolina, with power to contract and be contracted with, sue and be sued, and all the powers usually incident to such corporations.

II. That said corporation is justly indebted to the plaintiff in the sum of twenty-eight hundred and twenty-four $\frac{80}{100}$ dollars principal money, as per certificates of secretary and treasurer of said company

hereto attached, marked "A" & "B," and made part of this complaint, and 1,280 cross-ties at 1½ [cts.] each, making total for said cross-ties of $22.40, with interest from the 1st June, 1877, and one hundred and sixty-six $\frac{57}{100}$ dollars interest on said principal.

III. That no part of said sum has been paid.

518 Wherefore the plaintiff demands judgment for the sum, twenty-nine hundred and ninety-one $\frac{37}{100}$ dollars with interest on said sum of twenty-eight hundred and twenty-four $\frac{80}{100}$ dollars, from Jan'y 2nd, 1879, till paid, and costs of this action.

JAMES H. MERRIMON,
Plaintiff's Attorney.

H. H. Gramlin, the plaintiff in the above entitled action, being duly sworn, says: I have heard read the foregoing complaint, and know the contents thereof. The same is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters I believe it to be true.

J. H GRAMLING.

Sworn to and subscribed before me, this 4th day of June, 1879.
C. M. PACE, *Clerk.*

519 "A."

Statement of Account of H. H. Gramlin with the Spartanburg & Asheville Railroad Co.

By final estimate for work done on construction account of S. & A. R. Road Co. to Sept. 30th, 1877		$4,031 94
To amount paid as per vouchers to August, 1877	$935 30	
To amount paid as per vouchers to August, 1878	582 74	
Balance due	2,513 90	
		$4,031 94

I certify that the above is a true copy of construction account of H. H. Gramling with the Spartanburg & Asheville Railroad Co.
WM. K. BLAKE, *Sec'y & Treas'r.*

"B."

H. H. Gramling with Spartanburg & Asheville Railroad Co.

1877.					
June & July.	By 845 cross-ties (lot No. 3) furnished to and received by S. & A. R. Road Co				$211 25
1878.					
May —.	" 370 cross-ties, lot No. 3,	do.			92 50
January 29.	" 2¾ cords engine wood,	do.		2 75	
April 22.	" 6 do.	do.	do.	6 00	
					8 75
					$312 50
To amount paid as per vouchers to Aug. '78				15 00	
" " " "				9 00	
Balance due				288 50	
					$312 50

I certify that the above is a correct copy of the cross-ties and engine wood account of H. H. Gramling with the Spartanburg & Asheville Railroad Co.

[SEAL.] WM. K. BLAKE, *Sec't'y & Trea'r.*
E. & O. E.

520 *Judgment for Want of an Answer.*

STATE OF NORTH CAROLINA, *Henderson County:*

Superior Court, Spring Term, 1879.

H. H. GRAMLING, Pl't'ff,
against
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY, Defendant.

The summons in this action having [been] duly served upon the defendant corporation, and it appearing that no answer has been filed nor other defence made to the complaint herein, it is, on motion of James H. Merrimon, counsel for plaintiff, adjudged that the plaintiff recover of the defendant, The Spartanburg and Asheville Railroad Company, the sum of twenty-nine hundred and ninety-one $\frac{37}{100}$ dollars ($2,991.37), with interest on twenty-eight hundred and twenty-four $\frac{80}{100}$ dollars ($2,824.80), from the 2nd day of June, 1879, until paid, and costs of this action.

J. C. L. GUDGER,
Judge Presiding.

Costs of action	9 50
This transcript, certificate, & seal	2 00
	$11 55

STATE OF NORTH CAROLINA, *Henderson County:*

I, C. M. Pace, clerk of the superior court in and for the
521 county and State aforesaid, do hereby certify that the foregoing contains a full, true, and perfect transcript of the record in the case to which it refers (H. H. Gramlin *vs.* The Spartanburg and Asheville Railroad Company), as appears from the record and papers on file in my office.

In witness whereof I have hereunto set my hand and official seal at office in Hendersonville, this 26th day of September, 1879.

[SEAL.] C. M. PACE, *C. S. C.*

522 And on said 2nd day of December, 1879, A. Burwell, special master, files in said court, with his said report, the following papers, accounts, and exhibits in the order herein named, viz: Report of D. R. Duncan, president Spartanburg and Asheville Railroad Company; accounts against the said Spartanburg and Asheville railroad and in favor of Simpson Bobo; E. Clayton, Union Bank of Charleston, S. C., James McMakin, W. C. Cannon, J. E. Fry & J. A. Deal, partners under the name & style of Fry & Deal (with estimates, &c.); Pelger Rogers & Co., J. E. Adger, C. T. Lowndes & Co.,

W. K. Blake, W. H. Inman, H. F. King, J. T. Ballinger, Robinson, Taylor & Co., First National Bank of Charleston, S. C., Spartanburg, Union & Columbia Railroad Co., estate of Joseph Foster, G. Cannon, Joseph Walker, F. M. Trimmier, J. H. Evins, Bank of Charleston National Banking Association, A. S. Brown & Co., Edwin Bates & Co., Robert Wilson, T. A. Allen, A. Tanner, J. F. Davis, J. B.
523 Davis, The Peoples' National Bank of Charleston, S. M. Rice & R. L. Coleman, partners under the name & style of Rice & Coleman; D. R. Duncan, J. M. Coffin, J. H. Falkner, Thomas Hyatt, R. J. F. Wall & B. F. Alverson, E. Clayton, Thomas Symmons, Noah Wolfe, J. E. Fry & J. A. Deal, partners under the name & style of Fry & Deal; J. A. Bush, J. B. Tanner, J. H. Cantrell & Co., B. F. Bush, Hall & Alverson, Spartanburg Herald, B. F. Walker, W. H. West, J. P. West, J. B. O. Landrum, M. L. Williams, J. B. Rose, F. Cantrel, J. B. Ballinger, A. C. Davis, P. J. Davis, M. J. Fagg, P. S. Whisenaut, P. S. Whisenaut & Sons, M. P. Penland & Sons, Spartanburg, Union and Columbia Railroad Company, with the estimates of work done by E. Clayton; all of which said report, accounts, and estimates are in words and figures following, to wit:

524 *Report of President of S. & A. R. R. Co.*

AUG., 1877.

To the stockholders of the Spartanburg and Asheville Railroad Company:

As required in your by-laws, I herewith submit a statement, together with the report of your secretary and treasurer, showing the affairs and condition of your company as existing on the 1st of August, 1877, embracing the fiscal year beginning the first day of August, 1876. Since your last annual meeting the work of construction has steadily progressed as rapidly as the limited —— at our command would allow. Indeed we have to regret that the work has been pressed beyond the cash means available to meet the wants of those who have faithfully stood by us. Your board believed when last we met that to-day would have witnessed the completion of the entire grading to Pace's Gap; but this expectation was based upon the supposition that we could realize upon our securities a cash sum in such installments as would have warranted an increase
525 of force & enabled your contractors to have accomplished the desired end. Without adequate payments this could not be expected. Twelve months ago all looked hopefully forward to a better time in monitary affairs, and perhaps none entertained the thought of a greater scarcity of money or stringency of the currency. Yet your board found it more difficult upon the same securities to realize money than one year ago. The recent troubles at the North of course will aggravate this condition of things, and will tend to make capitalist- more timid and cautious in regard to investments in railroad interests.

Notwithstanding the difficulties which surround us, we propose no relaxation of effort to recompense those who have worked and

waited and are still standing by this great undertaking. In pursuance of the recommendations at our last meeting, you determined to make available that portion of your line which had been graded, by placing thereon the superstructure. To this end the issue
526 of the bonds of the company, not exceeding $10,000 per mile, was determined upon, & the creation of a mortgage of your whole property was authorized to secure the payment of the same. These bonds have been printed and the mortgage executed. No sale of these bonds have been made except the sum of $4,500, which was taken at par by the S. C., G. & C. R. R. Company for the transportation of our iron.

Their charges being at cash prices as low as if paid in money for the transportation of the same iron; the S., U. & C. R. R. rec'd payment in stock in your company, the charges being also at cash prices. The first purchase of iron was made in October, consisting of 500 tons, 15 cwt., 20 lbs., at $36.50 per ton delivered on board vessel; the fastenings for the same were bought of the Diamond Steel Works, Del., being 30,396 lbs. of fish-bars, at 2⅜ cts. per lb.; 35,250 lbs. of spikes, at 2½ cts., & 9,080 lbs. of bolts & nuts, at 3⅜ cts. The second purchase was made in Nov., being 500 tons, 3 qrs. 1 cwt., 82 lbs., at 38.50 per ton on board vessel at
527 tide-water, together with fastenings, as follows: 39,532 lbs. fish points, at 2⅜; 8,920 lbs. bolts & nuts, at 3⅜; 35,250 lbs. spikes, at 2½. The two lots purchased as above *was* manufactured by the Lochiel Works & the Bethlehem Works, of Pa., two of the best mills in this country. The iron is of superior quality & make, & was obtained at the lowest possible figures, the cash being paid for the same. It was evident that we could not continue to buy for cash, consequent upon the impossibility of raising money upon the 1st mortgage bonds of a road without any track in operation or any rolling stock. After repeated efforts with all the first-class mills to obtain rails upon a time basis, a contract was finally made with the Atlanta Rolling Mill, half cash & the balance in 12, 18, & 24 months, upon the notes of your company, secured by a deposit of your 1st mortgage bonds at the rate of 50 cts. on the dollar, the iron to be a first-class standard rail of 50 lbs. to the
528 yard, to be delivered at the town of Spartanburg, for $45.50 per ton. This is very near the figures, when cost of transportation is added, paid for the other iron. The price to be paid for the fastenings is 3 cts. round per lbs. for fish-plates, bolts, & nuts, & spikes, delivered at Spartanburg. We believe this was the best that could be done, & better than we could expect under the circumstances.

Under this contract very nearly 1,000 tons have been delivered, the half cash payment made & the notes executed as above for the balance.

It was deemed best that the company should lay the track with their own force instead of letting the same to contract; the lowest offer from responsible parties to do this work by contract was $300 per mile, whereas the cost of laying the — miles to Tyron depot will not exceed $200 per mile. An arrangement was made with the S.,

U. & C. R. R. for the use of their rolling stock at a price to be
529 fixed after the first of June last, by disinterested railroad officers. Prior to that time the use of their engine & flats in the work of track laying, hauling iron, &c., is to be paid for in stock at cash prices. Your company is fortunate in being able to make such an arrangement. The whole of the line is under contract for the grading, except about 10 miles from the town of Hendersonville to the Buncombe county line. Since our meeting, the contract which was awarded to Messrs. Chunn & Co. in Buncombe county, on account of failure to comply with the terms, was given to Capt. M. J. Fagg, who has since the 1st of May been working a considerable force. The work has been progressing, as before stated, on the other portions of the line as satisfactorily as could be expected. The Messrs. E. Clayton & Sons would have finished their contract in Polk county before this had your company been able to
530 make such payments as would warrant them in the employment of a larger force. As much has been done in view of our arrearage to them as could be expected; as *as* it is their work, will be completed within a few weeks, & before the company force can complete the line to Pace's Gap. The work in Henderson county has been vigorously carried on. Messrs. Cannon, Allen & Co. will complete their work by the 1st Sept. Messrs. Rice & Coleman theirs by the end of the year. The report of the sec'y & treas'r shows that the grading & trustles completed amounts to $397,891 48
Add to this 27 miles of track ---------- 124,600 00

$522,491 48
Value of depots & grounds and stockade property ----- 9,669 00

$532,160 48

The work and management of the convict force has been satisfactory. Estimates of work would have been better but for the
531 fact that for several months the working force was small on account of failure on the part of the penitentiary authorities to fill up the quota due under contract to the company. This has been recently done, & full force is now at work. The opening of that portion of the road laid to the traveling public which has — since 20th June, has been equal to expectations in the way of freight & travel, and has largely reduced the expence of transportation of supplies for the convict force, and afforded much greater facility to your contractors for carrying on their work.

In conclusion, we desire to impress upon every stockholder of this company the fact that the success and early completion of this great work depends upon their efforts & determination to sustain
532 their 1st mortgage securities & to realize upon them the highest possible figures. This is now our hope and salvation; we have good time to work before the debts which our 1st bonds are held to secure shall mature, and at same time every reason to believe that those who hold them, at least ¾, would give us every indulgence.

The report of the sec't'y and treas'r is herewith submitted, con-

taining a complete exhibit of the receipts and disbursements for the past year, with all necessary vouchers, & which have been submitted to the committee appointed from your body at the last meeting.

D. R. DUNCAN, *President.*

We do certify that we have compared the foregoing report of D. R. Duncan, pres't S. & A. R. R., made at annual meeting of stockholders in August, 1877, with the original, and find the same to be a true copy thereof.

JOHN H. EVINS,
G. CANNON.

[SEAL.] WM. H. BLAKE,
Sec'ty and Treas'r.

533 The Spartanburg and A. R. R. Co., to Simpson Bobo, Dr.:

One note for five hundred dollars, dated Nov. 1st, 1877--- $500 00

Due 1st Nov'r, 1879, with interest @ 12 per cent. per annum from date thereof.

Int from Nov. 1, *Nov.* 1877, to Oct. 1st, 1879---------- 121 60

THE STATE OF SOUTH CAROLINA, *Spartanburg County:*

Personally appeared Simpson Bobo, and made oath that the above statement is correct, and that the amount above specified and evidenced by a true copy of the note hereto attached, held by deponent, represents the indebtedness of said railroad company to deponent, no part of which been paid by discount or otherwise; that deponent holds two first-mortgage bonds of said railroad company, Nos. 35 and 36, for five hundred dollars each, as collateral to secure payment of said note and interest.

SIMPSON BOBO.

Sworn to and subscribed before me, Sept. 29th, 1879.

JNO. W. CARLUST, [SEAL.]
Not. Pub.

534 $500. SPARTANBURG, S. C., *Nov.* 1*st*, 1877.

On the first of November, eighteen hundred and seventy-nine, the Spartanburg and Asheville Railroad Co. promised to pay Simpson Bobo, Esq., five hundred dollars, value received, with interest from the first day of Nov., eighteen hundred and seventy-seven, at the rate of twelve per centum per annum, said interest to be paid annually, and have deposited with the said Simpson Bobo, as collateral security, one thousand dollars of the first mortgage bond of the Spartanburg and Asheville R. R. Company, viz., two bonds of five hundred dollars each, Nos. 35 and 36, first coupon on said bonds due Jan'y, 1879; and it is agreed that should the note not be paid at maturity the *the* said Simpson Bobo shall have the right to sell the said collateral bonds at public or private sale, without advertising, and apply the proceeds of sale to the payment of this note;

and should any part remain unpaid, then the Spartanburg and Asheville Railroad Company agrees to pay interest on said remainder at the rate of twelve per cent. per annum.

THE SPARTANBURG AND A. RAILROAD,
By D. R. DUNCAN, *Pres't.*

Attest:
W. K. BLAKE, *Sec. and Treas.*

535 Greenville and French Broad R. R. Co., in account with E. Clayton Sons.

1874.			
May 13.	To 4¾ yds. drilling, @ 12½		5 23
" " "	4 mule shoes, 40; nails, .20		60
" " "	(1) wash-tub		1 25
" " "	cups and saucers, 1.00; plates, 1.25		2 25
" " "	soda, .15; pepper, .40; coffee, 2.00		2 55
" " "	sugar, 1.50; salt, .50		2 00
" " "	knives and forks		1 25
" " "	2 candlesti-ks, .20; 40 candles, 1.25		1 65
" " "	4 ounces pepper, .25		2 00
" " "	envelopes and blotters		20
" " "	3½ lbs. small rope		70
" " "	p'd order Col. Coleman "Hun sucker"		3 00
" " "	2 cases harness oil, .25		50
			$23 18

Approved; correct.

T. COLEMAN,
Chief Engineer.

536 Greenville and French Broad R. R. Co., in account with E. Clayton.

May 13th, 1874, to July 20th, inclusive.
This acc't is correct.

T. COLEMAN,
Chief Engineer.

S. and A. R. R. Co. to Ephraim Clayton, Dr.

For use of 2 mules and harness and wagon for locating party, engineer corps, from Aug. 12th to Dec. 18th, days inclusive, 110 days, Sundays excepted, @ 75 cts., $82.50.

Approved.

T. COLEMAN,
Chief Engineer.

Spartanburg and Asheville R. R. Co. will pay Mr. P. S. Brittain, on demand, ($12.36) twelve dollars and thirty-six cents, on acc't Thos. Stancell, overseer and stockade.

June 21st, 1878.

A. TANNER, *Sup't.*

Due P. S. Brittain for beans & pease supplied to stockade, ($9.35), nine dollars and thirty-five cents.
July 12th, 1878.

A. TANNER, *Sup't.*

537 S. and A. R. R. Co., Dr. to E. Clayton.

To axemen furnished, revising location, from Jan'y 12th to Feb'y 18th, 5 days, @ $1.00 per day, $5.00
Approved.

T. COLEMAN,
Chief Engineer.

Rec'd payment,

_____ _____.

538 THE STATE OF SOUTH CAROLINA, *Union County:*

Personally appeared before me, Jas. Munro, clerk of the court of common pleas and general session for said county, Wm. Munro, who, being duly sworn, deposes and says: That he is the attorney of the Union Bank of South Carolina, a body corporate of said State; that as such attorney he hold- for collection a promissory note of the Spartanburg and Asheville Railroad Company, dated 21st April, 1877, and payable to said Union Bank, in the sum of three thousand dollars, twelve months after said date, with interest from date @ ten per cent. per annum, a copy of which note is hereto attached. That as collateral security therefor said bank holds twelve bonds of the first mortgage of said county, Nos. 54 to 65 inclusive. That deponent is informed by the officers of said bank, and verily believes, that no part of said note has been paid by discount or otherwise; and that said bank has no other security than above described.

WILLIAM MUNRO.

Sworn to before me, this 26th September, 1879.
[SEAL.]

JAMES MUNRO,
Clerk of Court.

539 *Copy Note.*

$3,000. CHARLESTON, S. C., *April 21st*, 1877.

Twelve months after date — promise to pay to Union Bank of So. Ca., or order, at said bank, three thousand dollars, for value received, with interest at the rate of ten per cent. per annum after date, having deposited with cashier as collateral security therefor, and for any other indebtedness which may now exist or may hereafter accrue from me to said bank, 12 bonds Spartanburg and Asheville Railroad Co., Nos. 54 to 65 inclusive, first mortgage, which I hereby authorize said bank to sell without notice, at public or private sale, at their option, in case of the non-performance of this promise, applying the net proceeds to the payment of this note, including interest, and to any other indebtedness then existing from me to said bank, and accounting to said bank for the surplus, if any. In case of deficiency, I promise to pay to them the amount thereof

forthwith after such sale, with interest upon amount unpaid @ the rate above specified.

(S'g'd) THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY,
By D. C. DUNCAN, *Pres't.*

540 Spartanburg and Asheville Railroad to James McMakin:

1875.				
Dec'r	20.	To 24 men's brogan shoes for D. Duncan		36 00
1876.				
Ja'y	18.	" 12 men's boots 3½, for D. Duncan, Pres.	42 00	
	"	" 1 pair men's wax brogans for D. Duncan	2 25	
				44 25
Feb'y	29.	" 6 pair men's wax brogans, 1.50 W. K. Blake S. & T.	9 00	
		" 4 q'ts shoe pegs, 10 c., W. K. Blake S. & T.	40	
				9 40
M'ch	21.	" 2 pair men's shoes, 1.90 & 2.00, W. K. Blake, S. & T.	3 90	
		" 1 pair pants, W. K. Blake S. & T.	2 00	
				5 90
May	30.	" 1 " boots for W. K. Blake, S. & T.	6 00	
				6 00
July	6.	" 1 pair men's shoes for D. Duncan	1 50	
				1 50
	28.	" 3 " pants per W. K. Blake	3 00	
				3 00
Sept.	29.	" coat and " " " " "	3 00	
				3 00
Oct.	3.	" 4 q'ts pegs " " "	40	
	"	" 1 pair crimp boards " " "	1 00	
	"	" 3 balls shoe thread " " "	45	
	"	" 1 box eyelets " " "	50	
	"	" 1 last	40	
				2 75
Dec'r	16.	" 1 pair men's shoes per D. Duncan	1 50	
				1 50
				$113 30

1876.		Cr.		
Feb'y	8.	By 6 pair boots ret'd	21 00	
1877.				
Aug.	3.	" freight on corn	5 20	
Sept.	24.	1,500 mile ticket	15 00	
		Bal. due	72 00	
				$113 30

STATE OF SOUTH CAROLINA, *Spartanburg County:*

Personally came before me Jas. McMakin, who, being duly sworn, makes oath that the Spartanburg and Asheville Railroad Company is indebted to him in the sum of seventy-two dollars and ten
541 cents, as above stated, and that no part of the same has been paid.

JAS. McMAKIN.

Sworn to before me, this 29th Sept., 1879.
[SEAL.] JOHN B. CLEAVELAND,
Notary Public.

542 SPARTANBURG, S. C., *Sept. 15th*, 1879.

Spartanburg and A. R. R. Co. bought of W. C. Cannon.

1876.				
Sept.	19.	1 coffee mill, 75c.; 1 p'r scissors, .75	$1 50	
"	"	544 lbs. bacon, 11c.	59 84	
"	25.	5 lb. tea, 95, 4.75; 10 gal. keg molasses, 7.50	12 25	
"	"	1 keg mule shoes	7 50	
"	29.	9 lb. borax, 25c., 2.25; 11½ lbs. starch, 10c., 1.15	3 40	
Oct.	3.	4 s'k flour, 13.00; 3 lamp chimneys, 25c.	13 25	
	6.	10 b'x W. P. caps	75	
	7.	7 padlocks	1 75	
	10.	49 lbs. tobacco, 55c., 26.95; 1 set teaspoons, .30	27 25	
	13.	10 lbs. pepper	2 50	
	17.	1,173 lbs. bacon, 11c	129 03	
	21.	44½ gals. syrup, 30c	13 35	
	"	3 s'ks flour, 3.50	10 50	
	26.	1 mill-saw file	90	
	31.	45 gals. syrup, 30, 13.50; 3 s'ks flour, 3.25, 9.75	23 25	
	"	25 lbs. H. S. nails, 20c., 5.00; 8-4 auger & handle, 1.40	6 40	
	"	1 p'r shovel and tongs, 75c.; 505 lbs. bacon, 10¾c, 54.28	55 03	
Nov.	3.	1 cross-cut saw, 4.50; 1 screw plate, 5.00	9 50	
	"	3 s'ks flour, 3.25, 9.75; 155 lbs. rice, 8c., 12.40	22 15	
	"	1 doz. axes, 12.00; 3 kegs nails, 8.50	20 50	
	"	15 lbs. borax, 25c., 3.75; 3 p'r hames, 75, 2.25	6 00	
	9.	Cr. by cash	——	$226 60
	10.	3 doz. axle grease, 3.00; 297 lbs. sugar, 10¾c., 31.92	34 92	

1876.			
Nov.	10. 485 lbs. bacon, 10¾c., 52.13; 52 lbs. tobacco, 55, 28.60	$80 73	
	" 4 s'ks flour, 13.00; 43½ gals. molasses, 30c., 13.05	26 05	
	11. Cr., by cash (see page 26)	——	$200 00
543	Continued from page 25:		
Nov.	15. 5 s'ks salt, 1.35	6 75	
	" 1 doz. b'x blacking	1 00	
	" 1 keg mule shoes, 7.50; 134 lbs. coffee, 22c., 29.48	36 98	
	21. 3 s'ks flour, 3.25	9 75	
	28. 2 box- can lye, 20	40	
	" ½ doz. shoe brushes, 1.20; 3 s'ks flour, 9.75	10 95	
	29. 2 paper- tacks	10	
	30. ½ doz. Ames shovels	6 75	
Dec.	1. 1 bot. ex. lem., 25; 2 axes, 2.50; 3 3 s'ks flour	10 80	
	Balance carried over	——	227 93
		654 53	654 53
1876.			
Dec.	2. Forward	227 93	
	" 1 p'r trace chains, 75; 1 doz. lap links, 25	1 00	
	5. 1 fry pan, 45; 8¼ lbs. ham, 1.57; 4 lbs. coffee, 1.00	3 02	
	" 8 lbs. sugar, 1.00; 1 b'g table salt, 10c.; 1 bar soap, .05	1 15	
	" 2 spoons, 10; 1 set knives & forks, 1.00	1 10	
	" 49 lbs. tobacco, 55, 26.95; 3 brooms, 40, 1.20	28 15	
	" 1 bot. lem. extract, .25; 1 doz. nutmegs, .25	50	
	" ¼ lbs. cloves, .25; 1 washboard, .25	50	
	6. 10 lbs. Ex. C sugar, 1.30; 2 lbs. nails, .15; coffee mill, .50	1 95	
	12. 40 lbs. tobacco, 60c., 24.00; 3 s'ks flour, 3.60, 10.80	34 80	
	13. ½ s'k flour, 1.90; 10½ lbs. bacon, 1.25	3 15	
	" 4 lbs. coffee, 1.00; 2 lbs. crackers, .25	1 25	
	" ¼ bus. meal	20	
	14. 1 p'r trace chains	75	
	20. 4 s'ks flour, 3.60	14 40	
	22. 1 b'x, .25; 32 lbs. soda crackers, .07c., 2.24	2 49	
	" 13 lbs. starch, 1.30; 5 lbs. spice, 1.25	2 55	

(See page 27.)

544	Continued from page 26.			
Dec.	22. 2 lbs. ginger, 50c.; 10 lbs. pepper, 2.50; 3 doz. nutmegs, 75		$3 75	
	" 20 lbs. Ex. C sugar, 2.80; 1½ in. chisel, 75		3 55	
	" 1½ in. auger, 1.00; 2 bars lead, 15c.		1 15	
	" 12 in. mill file, 90; 3 doz. axle grease, 3.50		4 40	
	26. 2 bus. corn, 75		1 50	
	27. 3 axe handles, 15		45	
	29. 265 lbs. rice, 7½		19 87	
	" 1 keg mule shoes, 7.50; 2 b'x toilet soap, 75c., 1.50		9 00	
1877.				
Jan'y	9. 50 carriage bolts		2 25	
	16. 8 pr. strap hinger, 20		1 60	
	" 1 shoe brush, 75; 2 s'ks flour, 4.00, 8.00		8 75	
	24. 1 pr. scissors, 50; 1 W. P. caps, 65		1 15	
	" 15 lbs. borax, 25		3 75	
	27. 1¼ lbs. oil stone, 50		63	
	30, 13¼ lbs. H. S. nails		2 65	
	" 1 keg mule shoes, 7.50; 2 keg nails, 8.50		16 00	
	19. Cr. by cash		----	$125 00
	22. " "		----	150 00
Feb'y	1. 25 gals. N. O. molasses, 65, 16.25; 40 lbs. coffee		26 25	
	2. 2 s'ks flour, 4.25		8 50	
	" 1 broom 40c.; 40 lbs. tobacco, 60c., 24.00		24 40	
	13. ¾ in. auger		60	
	20. 125 lbs. coffee, 22½, 28.13; ½ bbl. fish, 3.25		31 38	
	" ¾ bbl. pickels		5 50	
	" Cr. by 1 t'ce rice		----	36 64
	23. 40 lbs. tobacco, 60		24 00	
	Balance		----	216 08
			527 72	527 72
545	Forward		216 08	
Feb'y	23. Cr. by 1 b'x, 40 lbs. tobacco, returned.		----	24 00
	27. 2 kegs nails, 8.50; 1 curry comb, 25.		8 75	
M'ch	8. 1 " " 4.25; 1 twister plow, 1.14		5 40	
	" 1 doz. axle grease, 75; 1 keg soda, 6.00		6 75	
	" 1 set teaspoons		40	

1877.

M'ch	10.	281 lbs. bro. sugar, 11¼	$31 61	
	"	M'd'se for Mr. Pope, per order	2 10	
	"	" " M. C. Crawley, per order	13 60	
	13.	10 lbs. borax	2 50	
	"	1 re. wrap. paper, 2.25; 2 balls twine, 20	2 45	
	"	1 set knives and forks	1 50	
	14.	1 monkey wrench	1 25	
	"	1 drawing knife, 1.00; ¾ sugar, 1.00.	2 00	
	21.	40 lbs. starch, 7 c.	2 80	
	"	10 lbs. ginger, 2.50; 10 lbs. pepper, 2.50	5 00	
	"	41 lbs. tobacco, 55c., 22.55: 3 doz. toilet soap, 2.00	24 55	
	"	2 set knives and forks, 1.25, 2.50; 2 H. S. files, 25	2 75	
	24.	74 lbs. bacon, 9c.	6 66	
	"	2 lbs. tobacco, 60, 1.20; 1 p'r hames, 75	1 95	
	"	M'd'se to M. C. Crawley	7 15	
	27.	40 lbs. tobacco, 55c.	22 00	
	"	1 set knives and forks, 2.50; 1 carver, fork, & steel, 2.25	4 75	
	28.	23 gals. N. O. molasses, 54c.	12 42	
	"	1 molasses gat-, 50; 2 s'ks flour, 8.00	8 50	
Apr.	6.	1 set knives and forks	2 50	
	"	1 horse rasp, 1.00; 2½ doz. axle grease, 1.88	2 88	
	"	2 wooden bowles, 80; 3 bowles, 35, 1.05	1 85	

See page 29.

546 Continued from page 28.

Apr.	6.	½ doz. frying pans., 1.50; 20 lbs. sugar, 250	4 00	
	"	10lbs. coffee, 2.50; 2 s'ks. flour, 8.00	10 50	
	"	25 cakes soap	1 25	
	7.	Cr. by cash	----	$257 91
	11.	10 lbs. spice	2 50	
	"	25 " H. S. nails, 20c., 5.00; 524 lbs. bacon, 8¾, 45.85	50 85	
	16.	83 " bacon, 9c.	7 47	
		Balance	----	194 81
			476 72	476 72

		Forward	$194 81	
1877.				
Apr.	17.	206 lbs. bacon, 8¾c.	18 03	
	"	4 buckets, 1.00; 1 keg mule shoes, 7.50	8 50	
	"	2 kegs nails, 8.50; 40 lbs. tobacco, 55, 22.00	30 50	
	"	27 lbs. lemon crackers, 12½c.	3 37	
	20.	10 " nails, 60; ½ doz. Ames shovels, 6.75	7 35	
	21.	4 s'ks flour, 4.75	19 00	
	"	1 hand-saw, 2.25; 1 hatchet, 1.00; 1 but. knife, 50	3 75	
	28.	20 lbs. sugar, 2.50; 10 lbs. coffee, 2.50	5 00	
May	3.	155 lbs. bacon, 9½	14 72	
	7.	128 " " 9½	12 16	
	10.	½ doz. Ames shovels, 13.50	6 75	
	"	½ " Rowland " 11.00	5 50	
	"	2 mill files, 1.90; ½ doz. sifters, 2.10	4 00	
	"	1 doz. blacking, 85; ¼ doz. brooms, 75	1 60	
	"	1 re. wrap. paper, 2.00; 3 lbs. cot. twine, 90	2 90	
	"	¼ doz. p'kg. knives, 2.25; ¼ doz. p'kg. knives, 2.62	4 87	
	"	2 knob-locks, 1.50; 2 knob-locks, 2.50	4 00	
	"	1 cedar bucket, 60; 1 lb. sm. tobacco, 75	1 35	

See page 30.

547 Continued from page 29.

May	10.	½ doz. han. hoes, 8.00	4 00	
	"	10 lbs. soda	80	
	"	531 " bacon, 9⅜	49 79	
	"	144 " coffee, 25c.	33 12	
	14.	248 " bacon, 9½	23 56	
	"	9 carriage bolts, 4	36	
	16.	1 foot bolt, 40; 1 chain bolt, 40	80	
	"	Cr. by cash	----	$317 19
	17.	10½ bus. corn, 95	9 97	
	19.	250 lbs. bacon, 9¼	23 12	
	21.	2 padlocks, 50, 1.00; 2 locks, 75, 1.50	2 50	
	"	2 kegs nails	8 00	
	23.	3 s'ks salt, 1.25, 3.75; 1 bbl. vinegar 12.00	15 75	
	24.	250 lbs. bacon, 9¼	23 12	
	25.	511 " " 9c., 45.99; 1 box, 25	46 24	
	"	25 " Rio coffee, 24	6 00	
	29.	9⅙ bus. meal, 90	8 25	
	"	2 s'ks flour, 5.25	10 50	

1877.				
June	1.	4⅓ bus. meal	$3 90	
	"	2 s'ks flour, 10.50; 279 lbs. bacon, 8¼, 23.71	34 21	
	"	m'd'se paid C. Foster, per order for cross-ties	18 82	
	"	8 lbs. coffee, 2.00; 16 lbs. sugar, 2.00	4 00	
	4.	4 scythe blades, 1.15	4 60	
	"	81 lbs. tobacco, 60	48 60	
		Balance	----	$411 38
			728 57	728 57
548		Forward	411 38	
1877.				
June	8.	29½ lbs. ham, 15c.	4 42	
	9.	2 s'ks flour, 10.50; 1 s'k flour, 4.75	15 25	
	"	105 lbs. bacon, 8.93; 16 lbs. coffee 4.00	12 93	
	"	24 lbs. sugar, 3.00; 4 lbs. tobacco, 65, 2.60	5 60	
	"	1 s'k salt, 1.25; 1 s'k flour, 5.00	6 25	
	12.	5¾ bus. meal, 90	5 17	
	"	254 lbs. bacon, 8½, 21.59; 2 s'ks flour, 10.50	32 09	
	13.	598 lbs. bacon, 8¼	49 33	
	15.	24 " sugar, 3.00; 12 lbs. coffee, 3.00	6 00	
	18.	10 lbs. borax, 25	2 50	
	"	2 kegs nails, 7.75; 1 keg mule shoes, 6.75	14 50	
	"	1 keg mixed nails, 3.75; 1 broom, 50; 2 buckets, 50	4 75	
	20.	1 doz. axes, 13.50; 2 shoe brushes, 40	13 90	
	22.	1 cross-cut file, 30; 241lbs. bacon, 8¼, 19.88	20 18	
	"	6⅓ bus. meal	5 70	
	"	21 lbs. ham, 14	5 74	
	"	Cr. by cash	----	145 56
	26.	¾ in. auger	60	
	"	2 auger handles, 20; 17½ lbs. rope, 20, 3.50	3 70	
	28.	¾ auger	60	
	29.	10 lbs. nails	65	
July	2.	43 lbs. tobacco, 55, 23.65; 64 cakes soap, 3.00	26 65	
	3.	Cr. by cash	----	159 82
	4.	54 lbs. bacon, 8½	4 59	
	10.	6 s'ks flour, 3.75, 22.50; 6 s'ks salt, 1.25, 7.50	30 00	
	"	1 file, 75; 200 lbs. bacon, 8½, 17.00	17 75	

1877.				
July	14.	30 carriage bolts, 1.50; 1 fellow saw, 50	$2 00	
		See page 32.		
549		Continued from page 31.		
July	14.	½ doz. shoe brushes, 1.00; ½ doz. p'k. knives, 2.25	3 25	
	"	1 p'k. knives, 2.25; ½ doz. p'k. knives, 3.90	6 15	
	"	4 setts tea-spoons, 1.00; 2 setts table-knives, 2.25, 4.50	5 50	
	"	2 table-knives, 1.60, 3.20; 2 sets table-knives, 1.25, 2.50	5 70	
	"	2 s'ks flour, 4.00	8 00	
	16.	37½ lbs. ham, 14, 5.25; 1 b'k't lard, 1.75	7 00	
	"	Sugar, 2.50; coffee, 2.50	5 00	
		Balance	----	$437 45
			742 83	742 83
1877.				
		Forward	437 45	
July	17.	2 balls twine	35	
	20.	215 lbs. bacon, 8⅜	18 00	
	"	3 s'ks flour, 12.00; 16 lbs. coffee, 4.00	16 00	
	"	Tobacco	4 00	
	26.	4 kegs nails	14 50	
	"	1 keg h. and mule shoes mixed	6 25	
	"	10 lbs borax, 2.50; 10 p'k's table-salt, 80	3 30	
	"	25 lbs. H. S. nails, 5.00; 1 spoke auger, 1.50	6 50	
	"	Cr. by cash	----	177 33
Aug.	8.	152 lbs. bacon, 8½, 12.92; 2 s'ks flour, 3.75, 7.50	20 42	
	"	8 lbs. coffee, 2.00; 16 lbs. sugar, 2.00	4 00	
	15.	4 s'ks salt, 5.00; 1 keg soda, 5.50	10 50	
	"	10 lbs. sm. tobacco, 6.50; 31 lbs. tobacco, 75, 23.25	29 75	
	"	4 s'ks flour, 3.75	15 00	
	"	37 lbs. tobacco, 55, 20.35; 10 gals. molasses, 7.00	27 35	
	"	1 keg, 1.25; 3 shovels, 3.50	4 75	
	24.	2 p'r trace chains, 2.00; 4 s'ks flour, 3½, 14.00	16 00	
Sept.	11.	20 lbs. sugar, 2.50; 10 lbs. coffee, 2.50	5 00	
		See page 33.		

550	Continued from page 32.			
Sept.	15. M'd'se for Elias King, 1.05; m'dse to Ment Wood, 1.05	$2 10		
	" 1 lbs. soda, 10; 1 cake soap, 10	20		
Oct.	1. 43 lbs tobacco, 60	25 80		
	8. 109 " bacon, 10c.	10 90		
	11. 48½ gals. molasses, 33c.	16 00		
	" 25 lbs. H. S. nails, 18, 4.50; 1 keg mule shoes, 6.00	10 50		
	" 10 lbs. coffee	2 50		
	15. 622 " bacon, 9½	59 09		
	19. 1 bbl., 307 lbs., sugar, 10c.	30 70		
	" 1 s'k, 134 lbs., coffee, 21c.	28 14		
	" 1 s'k flour, 4.00; 20 lbs. sugar, 2.50	6 50		
	20. Cr. by cash	----	$130 00	
	22. 152 lbs. bacon, 9½	14 44		
	23. 1 padlock	40		
	24. 132 lbs. coffee, 20½, 27.06; 1 b'x soap, 3.25	30 31		
Nov.	30. 10 gals. N. O. molasses, 65	6 50		
1878.				
July	27. Cr. by L. G. P. ticket to Saluda	----	1 50	
Aug.	1. " " W. C. C. " " "	----	15 00	
	6. " " 2 R. R. "	----	3 80	
	26. " " 2,500 mile "	----	30 00	
Sept.	2. " " " L. C. C.	----	1 90	
	" " " " W. C. C.	----	5 50	
	Balance	----	522 67	
		885 70	885 70	
1879.				
Jan'y	1. To balance due	$522 67		

551 STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally came before me, W. C. Cannon, who, being duly sworn, makes oath that the above account against the Spartanburg and Asheville Railroad Company is just and correct, and that the balance of five hundred and twenty-two $\frac{67}{100}$, as therein specified, is justly owing to him, and has not been paid; that he has given all proper credits on the same as set forth in said account.

That the said railroad company is also indebted to him in the further sum of one hundred and forty-three dollars and sixty-nine cents, as evidence by the following order: To 1 order on sec. and treas. of said road for seventy-five dollars, signed by T. G. Williamson, resident engineer, and accepted by the said treas. Sept. 4th, 1877. 1 order signed by T. Coleman, engineer, for fifty dollars, and accepted by said sec. and treas. Sept. 6th, 1877. 1 order signed by Edward Alverson, and accepted by said sec. and treas. for eleven $\frac{9}{100}$ dollars Sept. 7th, 1877. And deponent says that none of the above-accepted

orders have been paid, and the same, together with balance of the account aforesaid, of five hundred and twenty-two $\frac{67}{100}$ dollars, is still due and unpaid.

W. C. COLEMAN.

Sworn to before me, this 24th September, 1879.
[LEAL.] GEO. COFIELD, *Notary Public.*

552 SPARTANBURG, S. C., *Sept. 7th*, 1877.

Mr. W. K. BLAKE, *Sec. and Treas. of S. and R. R. Co.:*

You will pay to W. C. Cannon eleven and $\frac{0}{100}$ dollars, and charge same to acc't of—

EDWARD ALVERSON.

[Endorsed across the face:] Accepted. Wm. K. Blake, sec. and treas.

M'dse. SPARTANBURG, S. C., *July 25th*, 1877.

Mr. W. K. BLAKE, *Sec. and Treas. of S. and A. R. R. Co.:*

You will pay to W. C. Cannon seven and $\frac{60}{100}$ dollars, and charge same to acc't of—

EDWARD ALVERSON.

[Endorsed across the face:] Accepted. W. K. Blake, sec. and treas.

M'dse. SEPT. 6TH, 1877.

W. K. BLAKE, Esq.

DEAR SIR: If you can possibly conveniently do so I will be obliged to you to pay Dr. McAboy, or his order, fifty dollars, and charge to my account.

T. COLEMAN.

[Endorsed across the face:] Accepted. W. K. Blake, sec. and treas.

Bills rec.

W. K. BLAKE, *Sec. and Treas. S. and A. R. R. Company:*

Will please pay to W. C. Cannon, or order, the sum of seventy-five dollars, and charge to my acc't.

$75.00. T. G. WILLIAMSON,
4th Sept., 1877. *Res'd't, Eng.*

[Endorsed across the face:] Accepted. W. K. Blake, sec. and treas.

553 Spartanburg and A. R. R. Co. in Acc't with Fry and Deal.

1876.					
Dec'r	22.	By cash		----	$2,000 00
1877.					
Feb'y	2.	" " p'd Mr. Fowler		----	100 00
"	26.	" " " A. G. Floyd		----	400 00
April	27.	" "		----	1,100 00
May	29.	" "		----	300 00
"	30.	" " 30th March		----	200 00
June	30.	" "		----	800 00
	"	To final est. S. C. dir.	7,210 67		
		" track laying tools	31 84		
		" cost of getting and fitting up pile driver	79 58		
July	12.	By cash		----	1,000 00
August	24.	" "		----	150 00
Sept.	14.	" " p'd Mr. Faulkner		----	75 00
"	17.	" "		----	500 00
Oct.	15.	" "		----	400 00
Nov'r	13.	" "		----	750 00
Dec'r	18.	" "		----	500 00
1878.					
March	27.	" "		----	100 00
"	"	" " p'd Mr. Cantrell		----	56 00
July	1.	" blacksmith acc't	30 60		
		" putting cross-ties on North Pacobit trestle	30 00		
		" 40 lbs. bacon, @ 15c.	6 00		
					66 60
		" — lbs. hay, @ —, got last year		----	70 54

Continued on page 20.

554 Continued from page 19.

	By freights on stone 115 chesnut 653 to A. L. R. R. 2.95	----	10 63
		7,322 09	8,578 77
	Debit deducted		7,322 09
	By bal. due	----	1,256 68
	To final est. Pacobit div	7,591 84	
	" credit deducted	1,256 68	
	" bal. due	$6,335 16	
	" cash not p'd Mr. Cantrell	56 00	
	" bal. on cross-ties on Pacobit div	135 66	
		6,526 82	

1878.
Nov. 4. To 757 cross-ties inspected but no est. ret'd to office at Spartanburg ---------- $151 40

6,279.16 Col. Blake's statement.

555 W. K. BLAKE, Esqr.,
Sec. and Treas. S. and A. R. R.

The cash value of work done on the So. Carolina Div. by Fry and Deal under the original contract of E. Clayton and Co. is six thousand nine hundred and seventy-eight dollars and $\frac{28}{100}$ ($6,978.28); according to the terms of their contract, they would thus be entitled to stock scrip amounting to $1,744.57.

T. COLEMAN,
July 20th, 1878. *Chief Engineer.*

556 Copy.

S. C. Division, Spartanburg and A. R. R.

Estimate final of work done by Fry and Deal, contractors.

Trestle at Lawson's Fork @ 24 cash		$1,567 82
" Jemmies creek " "		1,894 01
" McDowell's branch " "		412 27
" Holston " "		859 29
" Mothal creek " "		604 42
" South Pacobit " "		1,375 66
" Wingars and Edwards and Tank		166 20
Extra work at Lawson's Fork		37 50
" " Jemmies creek		5 25
" " Holston		78 92
" " Mothal		22 12
" " Laying pipe at Campobella		18 75
Cutting 20½ cords of wood		20 50
1,254 Bh. ft. plank for crossing @ 12		15 04
1,600 " " " " guards " 10		16 00
Hauling cross-ties, 6,682 @ 1¾ cts		116 94
		$7,210 67

Approved: T. COLEMAN, *Chief Engineer.*
June 30th, 1877.

NOTE.—Allowance made for wood is large, but is in consideration of prices of other extra work counted low.
(S'g'd) T. COLEMAN.

557 *Final.*

Spartanburg and Asheville R. R.

Estimate of work done from the month of June, 2nd day, 1877, to June 17th, 1878, on Sec. No. —, trestles Nos. 9, 10, 11, and 12, on Pacobit Division, 3rd residence, by Fry and Deal, contractors.

No. cubic yds.					
	Excavation earth				----
	" hard material				----
	" loose rock				----
	" solid "				----
	Embankment earth				----
	" rock				----
	Culvert masonry				----
	Arch				----
	Walls				----
	Backing				----
	Paving				----
	Clearing and grubbing				----
	B. M. Feet trestle, 233,127	squared timber, @	$20,		$4,662 54
	" 95,273	round " "	15,		1,429 09
	" 14,968	" "	10,		149 68
	" 3,500	" "	6,		21 00
	Cost of foundation				1,329 53
	Total amount				$7,591 84
	Deduct per cent. withheld				----
	Cash value of est				----
	Deduct payments				1,256 68
	Amount due				$6,335 16

I certify that this estimate is correct.

_____, _____,
Res'd't Engineer.

Approved. T. COLEMAN,
Chief Engineer.

558 The Spartanburg and Asheville R. R. Company to Pelzer, Rodgers & Co., Dr.

1877.		
May 15.	To note, with interest @ ten per cent. per annum, payable semi-annually (payable in 12 mo., as per copy annexed)	$2,000 00
	Collateral being four 1st mortgage bonds of said road, Nos. 118, 119, 120, and 121, 1st coupon due July 1st, 1877, payable in New York.	
1879.		
Oct. 1st.	To interest to date, as per annexed memor	476 60
1879.		
Oct. 1.	Total balance	$2,476 60

STATE OF SOUTH CAROLINA, *Charleston County:*

Personally appeared Francis J. Pelzer, of the firm of Pelzer Rodgers & Co., who, upon oath, says that the above note and interest against the S. and Asheville R. R. Company is correct and just, and that no part of the same has been paid by discount or otherwise.

FRANCIS J. PELZER.

Sworn to before me, this 20th day Sept., 1879.

[SEAL.] BENJ. C. WEBB,
Notary Public.

559 *Memo. Interest Account.*

1877.			
Nov. 15.	To 6 mos. int. on $2,000, @ 10 per cent		$100 00
1878.			
May 15.	" 6 " " " $2,100		105 00
Nov. 15.	" 6 " " " $2,205		110 25
1879.			
May 15.	" 6 " " " $2,315		115 75
Oct. 1.	" 4 " and 15 da's interest on $2,430		45 60
			$476 60

560 $2,000.00. CHARLESTON, S. C., *May 15th*, 1877.

Twelve months after date the Spartanburg and Asheville R. R. Company promises to pay to Mess. Pelzer, Rogers & Co. or order, without offset, two thousand dollars, for value received, at the First Nat. B'k of Charleston, S. C., interest from date at the rate of ten (10) per cent. per annum, payable semi-annually. Having deposited with the said Pelzer, Rogers and Co. as collateral security four first mortgage bonds of the Spartanburg and Asheville Railroad Company for one thousand dollars each, numbered as follows, 118, 119, 120, & 121, with all the coupons attached. And in case this note shall not be paid when due, the Spartanburg and Asheville Railroad Co. hereby give the said Mess. Pelzer, Rogers and Co. authority to sell the said security, or any part thereof, for its account on the maturity of this note, or at any time thereafter, at public or private sale, at their discretion, without advertising the same; and to apply so much of the proceeds of said security to the payment of this note as may be necessary to pay the same, with interest due thereon; and also the payment of all expenses attending the sale of the said security. If the net proceeds of the said security shall not cover the amount due upon this note, it holds itself bound
561 to pay the balance forthwith after such sale, with interest at the rate of ten (10) per cent. per annum.

(Signed) THE SPARTANBURG AND ASHVILLE RAILROAD CO.
By D. R. DUNCAN, *Pres't.*

Attest: (S'g'd) W. R. BLAKE,
Sec'y and Treas.

Seal of Co. attached.

562 Spartanburg and Asheville R. R. Co. bought of J. E. Adger and Co.:

1877, October 27. To note at 1 year from date and due October 27th, 1878, for 229.23. Interest ten per cent. (10 per cent.) per annum from date of note.

We hold 1st mortgage bond No. 147 for ($500.00) five hundred dollars as collateral.

1st coupon due July 1st, 1878.

STATE OF SOUTH CAROLINA, *Charleston County:*

Personally appeared before me Ellison A. Smyth, of the firm of J. E. Adger and Co., who maketh oath and saith that above is a true statement of amount due them on note of Spartanburg and Asheville R. R. Company (a true copy of which is hereto appended as a part of this deposition), and upon which no payment has ever been made by cash or otherwise.

ELLIASON A. SMYTH.

Sworn to and subscribed before me, this 23rd day of September, 1879.

[SEAL.] HENRY P. FOSTER,
Notary Public.

563 Copy.

$229.93. CHARLESTON, S. C., *Oct.* 27, '77.

On the 27th day of October, 1878, the Spartanburg and Asheville R. R. Co. promise to pay to order of J. E. Adger and Co., at their office, two hundred and twenty-nine dollars and ninety-three cents, value received, interest from date at the rate of ten per cent. per annum until paid in full, and have deposited with the said J. E. Adger and Co. as collateral security five hundred dollars of the first mortgage bonds of the Spartanburg and Asheville R. R. coupons No*vember* 147, first coupon due July 1st, 1878, and it is agreed that should this note not be paid at maturity, then the said J. E. Adger and Co. shall have the right to sell the said collateral bond at public or private sale without advertisement, and apply the proceeds of sale to the payment of this note, and should any part remain unpaid, then the Spartanburg and Asheville R. R. Co. agree to pay interest on said remainder at the rate of ten per cent. per annum.

THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY,

[SEAL.] By D. R. DUNCAN, *Pres't.*

W. K. BLAKE, *Sec't. and Treas.*

564 Statement of claim against Spartanburg and Asheville R. R., held by C. T. Lowndes and Co., of Charleston, S. C.

Note D. R. Duncan, pres. Spartanburg and Asheville R. R. Co., dated April 21st, 1877, at 12 mo's, and payable April 21st and 24th, 1878, said note secured by four (4) int. mortgage bonds of said road of $500 ea., and numbered 10, 66, 67, 100, the first coupon on said bonds being payable July 1st, 1877 ---------- $1,000

Personally appeared before me Samuel Wragg, well known to me as a member of the firm of C. T. Lowndes and Co., who made oath that the above statement was made out by him, and that the same is correct to the best of his knowledge and belief.

SAM'L WRAGG.

Sworn to before me, this 20th September, 1879.

[SEAL.] HUTSON LEE,
Notary Public.

565 Copy.

$1,000.00. CHARLESTON, S. C., 21*st April*, 1877.

Twelve months after date The Spartanburg and Asheville Railroad Company promise to pay to C. T. Lowndes and Co., or order, without offset, negotiable and payable at their office in the city of Charleston, S. C., one thousand $\frac{00}{100}$ dollars, for value rec'd, with interest after maturity at the rate of ten per cent. per annum, having deposited with said C. T. Lowndes and Co. four of the first mortgage bonds of the Spartanburg and Asheville Railroad Company for $500 each, all coupons attached, and said bonds numbered Nos. 66, 67, 10, and 100, interest payable semi-annually from this date, as collateral security for this or any other indebtedness, either as drawer, indorser, or accepter; and in case this or any other indebtedness shall not be paid when due or on demand, the company hereby give the said C. T. Lowndes and Co. authority to sell the said security, or any part thereof, for —— account, at any time, at public or private sale, at their discretion, without advertising the same or giving the company any notice, and to apply so much of the proceeds of said security to the payment of this or other indebtedness as may be necessity to pay the same, with all interest due thereon, and also to the payment of all expenses attending the sale of the said
566 security. If the net proceeds of the said security shall not cover the amount due upon this or other indebtedness, the company hold themselves bound to pay the balance forthwith after such sale, with interest at the rate of ten per cent. per annum; and in case the above collaterals decline in value at any time, and company shall, upon request, verbal or written, fail to make good the margin, then said C. T. Lowndes and Co. may proceed to sell as if this note had matured.

Witness: (S'g'd) THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY.
By D. R. DUNCAN, *President.*

567 Spartanburg and Asheville Railroad Co., Dr., to Wm. K. Blake, Sec't'y and Treas.

For services as sec't'y and treas., from Aug. 1st, 1875, to Aug. 1st, 1876			$1,500 00
Ditto	ditto	from Aug. 1, '76, to Aug. 1, '77	2,000 00
Ditto	ditto	" Aug. 1, '77, to Aug. 1, '78	1,500 00
Ditto	ditto	for Aug. and Sept., 1878	250 00
			$5,250 00

By cash paid to August, 1876	$830 43
" " " to " 1877	1,555 60
" " " to August, 1878	1,000 00
" " " Aug. and Sep., 1878	213 97
Balance due W. K. Blake, sec't'y & T.	1,650 00
	$5,250 00

STATE OF SOUTH CAROLINA, *County of Spartanburg.*

Personally appeared before me W. K. Blake, who, being sworn, makes oath that the above amount of sixteen hundred and fifty dollars is just, correct, and that the said Spartanburg and Asheville Railroad Company is justly indebted in that sum to him for salary as sec. & treas. of said company, and that he has not rec'd payment of the sum by discount or otherwise.

WM. K. BLAKE.

Sworn to before me, this 30th Sept., 1879.
[SEAL.] BENJ. WOFFORD,
Not. Pub.

568 The Spartanburg and Asheville Railroad Co., D. R. Duncan, Pres't, to Wm. H. Inman, Dr.:

1877.				
July	17.	To cash paid draft	7,000	
Sept.	8.	" " do.	5,000	
"	10.	" for county coupons collected	4,307	50
"	17.	" paid draft	5,000	
October	26.	" do.	2,000	
Nov.	16.	" do.	2,000	
Dec.	10.	" do.	586	
"	20.	" do.	1,000	

Oct. 1. Interest on above, viz:

On $7,000,	2 yrs., 2 mo.,	13 da.	1,079 34
5,000,	2 "	22 "	721 38
4,307.50,	2 yrs.,	20 "	619 76
5,000	2 "	13 "	712 63
2,000	1 yr., 11 mo.,	5 da.	270 27
2,000	1 " 10 "	14 "	262 10
586	1 " 9 "	21 "	74 17
1,000	1 " 9 "	11 "	124 63
			3,864 28

Due Wm. H. Inman on this acc't $30,757 78

E. and O. E.

New York, Oct. 1st, 1879.

569 Mr. W. K. Blake, treasurer of the Spartanburg and Asheville R. R. Company, please pay H. F. King twenty-five dol-

lars and 35 cents of my cross-ties money, and oblige yours, this 24 of August, 1877.

A. M. BABEW.

[Endorsed across face:] Accepted, to be paid when in funds. Wm. K. Blake, sec't'y and treas.

H. F. King, in account with Spartanburg and Asheville R. Road Co.:

By 111 cross-ties	$27 75	
688 cross-ties	172 00	
		$199 75
To payment, as per vouchers	$30 55	
" payment by D. R. Duncan, pres.	100 00	
" " " " "	40 00	
		$170 55
Balance due H. F. King		$29 20
To accepted order	$25 00	
Balance on ticket	$6 84	
		31 84
		$61 04

The above is a correct statement of account of H. F. King with S. & A. R. Road Co. Nov., '79.

WM. K. BLAKE,
Sec'ty and Treas.

570 STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally came before me H. F. King, who being duly sworn, makes [oath] that the above amount of sixty-one $\frac{04}{100}$ dollars, as specified herein, is justly owing and due to him by the Spartanburg and Asheville Railroad Company, and that he has rec'd payment of the same.

H. F. KING.

Sworn to before me, this 24th Sept., 1879.

J. K. JENNINGS, [SEAL.]
Not. Pub.

571 STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally came before me, J. T. Ballenger, who makes oath that the sum of twenty-seven dollars is still due and payable to him by the Spartanburg and Asheville Railroad Company for balance on account of cross-ties furnished to said road in 1877, and that he has not rec'd payment of the same nor any part thereof.

J. T. BALLENGER.

Sworn to before me, this 15th Sept., 1879.

[SEAL.] JOHN CLEVELAND, *Not. Pub.*

I certify that the balance of twenty-seven dollars is still due J. T. Ballenger for cross-ties.

D. R. DUNCAN,
Pres't S. & A. R. R. Co.

572 *Statement of Notes of The Spartanburg and Asheville R. R. Co., held by Robertson, Taylor & Co., Successors to Geo. W. Williams & Co.*

Note dated Dec'r 29th, 1876, due Jan'ry 1st, 1878	$5,000 00	
Int. to Jan'ry 4th, 1878	606 66	
	5,606 66	
Int. to Jan'ry 4th, 1879	672 84	
	6,279 50	
Int. to Sept. 17th, 1879	537 98	
		6,817 48
Note dated June 9th, 1877, due June 9, 1878	5,000 00	
Int. to June 9th, 1878	465 26	
	5,465 26	
Int. to June 9th, 1879	546 52	
	6,011 78	
Int. to Sept. 18th, 1879	167 66	
		6,179 44
		$12,996 92

The following first mortgage bonds of the Spartanburg and Asheville Railroad Co. were pledged, and are held as collateral security to the notes above stated, to wit:

573

No. 179.	1st coupon due Jan'y 1st, 1878	$1,000 00
No. 180.	1st coupon due Jan'ry 1st, 1878	1,000 00
No. 181.	1st coupon due Jan'ry 1st, 1878	1,000 00
182.	" " "	1,000 00
183.	" " "	1,000 00
184.	" " "	1,000 00
185.	" " "	1,000 00
186.	" " "	1,000 00
187.	" " "	1,000 00
188.	" " "	1,000 00
11.	" " "	500 00
12.	" " "	500 00
13.	" " "	500 00
14.	" " "	500 00
15.	" " "	500 00
16.	" " "	500 00
17.	" " "	500 00

No.	18.	1st coupon due Jan'ry 1st, 1878	$500 00
	19.	" " "	500 00
	20.	" " "	500 00
	21.	" " "	500 00
		Am't forward	$15,500 00
574		Am't forward	15,500 00
	No. 22.	1st coupon, due Jan'y 1st, 1878	500 00
No.	23.	1st coupon, due Jan'y 1st, 1878	500 00
	24.	" " "	500 00
	25.	" " "	500 00
	26.	" " "	500 00
	27.	" " "	500 00
	28.	" " "	500 00
	29.	" " "	500 00
	30.	" " "	500 00
		Total am't of bonds held as collateral	$20,000 00

STATE OF SOUTH CAROLINA, *City of Charleston:*

Personally before me, Joseph B. Hyde, a notary public, by letters patent, came Joseph R. Robertson, one of the firm of Robertson, Taylor & Co., who, being duly sworn, deposeth that the foregoing statement of the notes of the Spartanburg & Asheville Railroad Co. in favor of Geo. W. Williams & Co., and now held by said Robertson, Taylor & Co., as successors of the said firm of Geo. W. Williams & Co., and of the bonds held as collaterals to the said notes, is true and correct.

JOSEPH R. ROBERTSON.

Sworn to and subscribed before me, this eighteenth day of September, A. D. 1879.

[SEAL.] JOSEPH P. HYDE,
Notary Public.

575 Copy.

$5,000.00. SPARTANBURG, S. C. *9th June*, 1877.

On the 9th day of June, 1878, the Spartanburg and Asheville Railroad Company prómise to pay to the order of Geo. W. Williams & Co., at the Carolina Savings Bank, of Charleston, S. C., five thousand dollars, value received, with interest from the 9th of July, 1877, at the rate of ten per cent. per annum until paid in full, and have deposited with the said Geo. W. Williams & Co. as collateral security ten thousand dollars of the first mortgage bonds of the Spartanburg & Asheville Railroad Company, No. 179 to No. 188, inclusive, for one thousand dollars each, first coupons of which are due the first day of January, 1878; and it is agreed that should this note not be paid at maturity, then the said Geo. W. Williams & Co. shall have the right to sell the said collateral bonds at public or private sale, without advertisement, and apply the proceeds of

sale to the payment of this note; and should any part remain unpaid, then the Spartanburg & Asheville Railroad Company agrees to pay interest on the said remainder at the rate of ten per cent. per annum.

THE SPARTANBUG & ASHEVILLE R. R. CO.
[SEAL.] By D. R. DUNCAN, *Pres'd't.*
Attest:
(Signed) WM. K. BLAKE,
Sec'ty & Treas.

576 Copy.

SPARTANBURG, So. CA., *December* 29, 1876.

On the first day of January, 1878, The Spartanburg & Asheville Railroad Company promise to pay to the order of Geo. W. Williams & Co., at the Carolina Savings Bank of Charleston, S. C., five thousand dollars, value received, with interest from the first day of January, 1877, at the rate of twelve per centum per annum until paid in full, and have deposited with the said Geo. W. Williams & Co. as collateral security ten thousand dollars of the first mortgage bonds of the Spartanburg & Asheville Railroad Company, viz., twenty (20) bonds of five hundred dollars each, from No. 11 to No. 30, inclusive, first coupons on said bonds due July, 1877. And it is agreed that should this note not be paid at maturity, then the said Geo. W. Williams & Co. shall have the right to sell the said collateral bonds at public or private sale, without advertisement, and apply the proceeds of sale to the payment of this note; and should any part remain unpaid, then the Spartanburg & Asheville Railroad Company agrees to pay interest on said remainder at the rate of twelve per centum per annum.

(Signed) THE SPARTANBURG & ASHEVILLE R. R. CO.,
By D. R. DUNCAN, *President.*
Attest: [SEAL.] WM. K. BLAKE,
Sec'ty & Treas.

577 $555\frac{81}{100}$. Copy. 14504.

SPARTANBURG, So. CA., *November 25th*, 1877.

On the 25th day of November, eighteen hundred and seventy-eight, The Spartanburg & Asheville Railroad Company promise to pay to the order Jno. S. Fairley & Co. five hundred and fifty-five $\frac{81}{100}$ dollars, value received, with interest from date, at the rate of ten per centum per annum, said interest to be paid annually, and have deposited with the said Jno. S. Fairly & Co. as collateral security eleven hundred dollars of the first mortgage bonds of the Spartanburg & Asheville Railroad Company, viz., two bonds of $500 each, Nos. 148 & 149, and one bond of $100, No. 9, first coupons on said bonds being due July 1st, 1878; and it is agreed that should this note not be paid at maturity, then the said Jno. S. Fairly & Co. shall have the right to sell the said collateral bonds at public or private sale, without advertisement, and apply the proceeds of sale to the payment of this note, and should any part remain unpaid, then the

Spartanburg & Asheville Railroad Company agrees to pay interest on said remainder at the rate of ten per centum per annum until payment of the said remainder.

THE SPARTANBURG & ASHEVILLE RAILROAD COMPANY,
By D. R. DUNCAN, *President.*
Attest: WM. K. BLAKE,
Sec'y & Treas.

578 Claim of Jno. S. Fairley & Co. *vs.* S. & A. R. R. Co.

Nov. 25, 1877. To note due November 25th, 1878_____ $551 81

Bearing interest @ 10 per cent. per annum from its date, and secured by following first mortgage bonds of S. & A. R. R. Co.:
No. 9 for one hundred dollars.
" 148 " five " "
" 149 " " " "
First coupons due July 1st, 1878.

STATE OF SOUTH CAROLINA, *Charleston County:*

Personally appeared before me John S. Fairly, of the firm of John S. Fairly & Co., who maketh oath and saith that [the] above is a true statement of note due his firm by Spartanburg & Asheville R. R. Company (a copy of which is hereto annexed as a part of this deposition), and that no payment has ever been made thereon, by cash or otherwise.

JNO. S. FAIRLY.

Sworn to and subscribed before me, this 30th day of September 1879.
[SEAL.] HENRY P. FOSTER,
Notary Public.

579 Statement of note discounted by the First National Bank of Charleston, S. C., for the credit of the Spartanburg and Asheville Railroad Company.

Amount of note, thirty-five hundred dollars, payable April 29th, 1878; rate of interest, 12 per cent, guaranteed by seven first mortgage bonds of the Spartanburg and Asheville railroad; one thousand dollars each. Nos. 101, 102, 103, 104, 105, 106, 107.

STATE OF SOUTH CAROLINA, *Charleston County:*

Personally appeared Andrew Simonds, president of the First National Bank of Charleston, So. Ca., who deposes that *that* the above statement of note discounted by 1st Nat. Bank of Charleston, S. C., for credit of the Spartanburg & Asheville R. Road Co., is correct.

ANDREW SIMONDS, *Pres't.*

Sworn to before me, this 19th Sep., 1879.
[SEAL.] J. O. BECKMAN,
Notary Public.

580 $3,500. CHARLESTON, So. CA., *April 26th*, 1877.

Six months after date The Spartanburg and Asheville Railroad Company promise to pay to the First National Bank of Charleston, S. C., or order, without offset, negotiable and payable at First National Bank, Charleston, S. C., three thousand five hundred dollars for value received, with discount before and interest after maturity at rate of twelve per cent. per annum, having deposited with said bank seven (7) first mortgage bonds of the said Spartanburg and Asheville R. R. Comp'y for $1,000 each, numbered as follows: Nos. 101–107, with all coupons attached, the first of which being due 1st July, 1877. As collateral security for this or any other indebtedness, either as drawer, endorser, or acceptor, and in case this or any other indebtedness shall not be paid when due or on demand, we hereby give the said bank authority to sell the said security, or any part thereof, for our account at any time, at public or private sale, at their discretion, without advertising the same or giving us any notice, and to apply so much of the proceeds of said security to the payment of this or any other indebtedness as may be necessary to pay the same with all interest due thereon, and also to the
581 payment of all expenses attending the sale of said security.

If the net proceeds of the security shall not cover the amount due upon this or any other indebtedness, we hold ourselves bound to pay the balance forthwith after such sale, with interest at rate of twelve per cent. per annum.

(Signed) THE SPARTANBURG & ASHEVILLE R. R. COM'Y,
By D. R. DUNCAN, *President.*

Attest: (Signed) W. K. BLAKE,
Sec'y & Treasurer.

Int. on above note paid to April 29th, 1878.

582 Spartanburg and Asheville R. R. to Spartanburg, Union & Columbia R. R. Co., from June 1st, 1877, to Nov'ber 1st, 1878, Dr.

1877.						
June	30.	To engine runner,	1 month	75 00		
"	"	" fireman,	1 "	20 00		
					95 00	
July	31.	" engine runner,	1 "	75 00		
"	"	" fireman,	1 "	20 00		
					95 00	
Aug.	31.	" engineer,	27 days	77 85		
"	"	" fireman,	27 "	27 00		
					104 85	

1877.					
June	30.	To 1 engine & 5 cars, 25 days	425 00		
July	31.	" 1 " 5 " 27 "	459 00		
Aug.	31.	" 1 " 5 " 27 "	459 00		
	"	" 1 box car, 10 "	20 00		
June	8.	" 2 frogs	8 00		
"	9.	" 1 switch stand & rods	12 00		
Aug.	1.	" 1 frog	4 00		
					1,387 00
Sept.	30.	" 1 engine & 5 cars, 13 days	271 00		
	"	" 1 engineer, 25 "	58 20		
	"	" 1 fireman, 25 "	25 00		
	"	" train hands, 3 "	1 50		
					305 70
Oct.	30.	" engine, 27 "	218 70		
	"	" 1 coach, 27 "	72 90		
	"	" 6 fr't cars, 162 days, @ 2.00	324 00		
	"	" 7 " moving freight 378 miles, 1½	5 67		
	"	" train hands, 13 days	6 50		
					627 77
Nov.	30.	" 1 engine, 26 "	210 60		
	"	" 1 coach, 26 "	70 20		
	"	" 3 flats, 13 " @ 2.00	78 00		
	"	" 3 cars, 26 days, each @ 2.00	156 00		
583	"	" cars moving freight 1350 miles, 1½	20 25		
	"	" 304 lbs. bolts, at 6c.	18 24		
	"	" 340 " " "	20 40		
					573 69
Dec'r	7.	" use of engine & hand, at run-off.	75 00		
	17.	" 243 lbs. bolts & washers, 6½c.	15 80		
	31.	" engine 26 days	210 60		
	"	" 1 coach 26 days	70 20		
	"	" 2 shanty cars 52 days, at 2.00	104 00		
	"	" 1 flat car 26 days, at 2.00	52 00		
	"	" 3 flat cars, 13 each, 39 days, at 2.00	78 00		
	"	" cars moving freight 756 miles, 1½	11 34		
					616 94
		Am't for'd			3,805 95
1878		Am't bro't for'd			3,805 95
Jan'y	31.	To 1 engine 27 days	218 70		
	"	" 1 coach 27 days	72 90		
	"	" 2 shanty cars 54 days	108 00		
	"	" 3 flat cars 81 days	162 00		
	"	" cars moving freight 1130 miles, 1½	16 95		
					578 55

1878.					
Feb'y	28.	To 1 engine 24 days	194 40		
	"	" 1 coach 25 days	64 80		
	"	" 3 shanty cars 72 days	144 00		
	"	" cars moving freight 1626 miles, 1½	24 39		
	"	" 15 lb. steel chisels, 20c.	3 00		
				430	59
M'ch	30.	" 1 engine 26 days	210 60		
	"	" 1 coach 26 days	70 20		
	"	" 2 shanty cars 52 days	104 00		
	"	" 3 flat cars 72 days	156 00		
584	"	" " " "	144 00		
	"	" cars moving freight 2305 miles, 1½	34 57		
				719	37
Ap'l	30.	" 1 engine 26 days	210 60		
	"	" 1 coach 24 days	64 80		
	"	" 2 coach	26 30		
	"	" 1 engine (extra), 1½ day	12 16		
	"	" 1 engine on material train 2 days	14 00		
	"	" 2 shanty cars 52 days	104 00		
	"	" 3 flat cars 78 days	156 00		
	"	" cars moving freight 1592 miles, 1½	23 88		
	"	" telegraphing to Atlanta for iron	2 56		
				612	30
May	31.	" making iron dump car	30 00		
	"	" W. Home truck	12 00		
	"	" sharping picks & bars	3 00		
	"	" 4 shovels, 1.35	5 40		
	"	" 4 pinch bars, 120 lb., at 8c.	9 60		
	"	" 4 picks, at 1.50	6 00		
	"	" 4 hammers, at 1.75	5 00		
	"	" guide (track) boards, 1.00	2 00		
	"	" 4 steel wrenches, 1.00	4 00		
	"	" 1 pr. tongs	1 50		
	"	" 218 lbs. bolts & washers, at 3c	6 54		
	"	" 6 shovels, 1.35	8 10		
	"	" 1 axe	1 25		
	"	" iron pipe for trank	20 40		
	"	" 1 engine 27 days	218 70		
	"	" 1 engine on material train 27 days	189 00		
	"	" 2 coaches, 27 days each, 54 days	145 80		
585 & '6	"	" 6 cars, 162 "	324 00		
	"	" 2 " 12 "	24 00		
	"	" cars moving freight 821 miles	12 27	1,028	56
		Am't for'd		7,175	32

1878.		Am't bro't for'd			7,175 32
June	30.	To 1 engine 25 days		202 50	
	"	" 2 coaches 25 " each, 50 days		135 00	
	"	" 1 engine on material train 25 days		175 00	
	"	" 3 shanty cars 75 days		150 00	
	"	" 2 flat cars 50 days		100 00	
	"	" cars moving freight 1,335 miles, $1\frac{1}{2}$		20 00	
	"	" 8 wrenches		12 00	
	"	" 2,085 lbs. bolts & washers, $3\frac{3}{4}$		78 18	
	"	" 192 lbs. iron, $\frac{1}{2}$ & $2\frac{1}{2}$ inch, "		7 20	
	"	" 3,728 feet pine		44 73	
	"	" carpenter Brown $4\frac{1}{4}$ days, 2.25		9 55	
	"	" " Gorman $4\frac{1}{2}$ " 1.75		10 05	
	"	" machinist Frazer 8 " 2.25		18 00	
	"	" " Howe 2 "		2 00	
	"	" carpenter Murdock $16\frac{1}{2}$ days, 60 per m.		38 07	
	"	" laborer Lyles, $16\frac{1}{2}$ days, 12 per m.		7 61	
	"	" " Eddington, 12 " "		5 54	
	"	" " Kinkad $16\frac{1}{2}$ " 9 "		5 71	
	"	" " Grottie $16\frac{1}{2}$ " "		5 71	
	"	" " Williams $16\frac{1}{2}$ " "		5 71	
	"	" " Boyd $5\frac{1}{2}$ " "		1 90	
	"	" rations for above laborers		7 00	
	"	" expenses on car lumber		12 00	1,053 48
587					
July	31.	To engine on mail train 27 days		307 80	
	"	" 2 coaches 27 days each, 54 days		205 20	
	"	" 1 engine on material train 27 "		189 00	
	"	" 3 shanty cars 81 days		162 00	
	"	" 3 fl't cars 81 "		162 00	
	"	" 1 engine (extra) 5 "		35 00	
	"	" 10 extra cars with extra train, 7.50		7 50	
	"	" cars moving freight 3,582 miles, $1\frac{1}{2}$		53 73	
	"	" 85 lb. iron, $3\frac{3}{4}$		3 18	
	"	" smith & striker 1 day		5 00	
	"	" 764 feet pine lumber		9 16	
	"	" 2 switch iron, 362 lb., 3 c.		10 86	
	"	" pipe for tank & fixture		43 50	
	"	" 2 hammers, 4.00; 2 crowbars, 7.00; 2 wrenches, 2.00		13 00	
	"	" 3 shovels, 1.35		4 05	
	"	" carpenter Brown 2 days		6 00	
	"	" " Murdock 15 days, 60 per m.		34 61	

1878.					
July	31.	To 2 laborers 29½ days, 12 per m...		13 61	
	"	" 3 " 39½ " 9 " ...		13 65	
	"	" rations furnished for laborers...		5 97	1,284 82
Aug.	5.	" paid draft of April 2nd.....		467 95	9,513 62
	7.	" " " 5th		242 23	710 18
	31.	" 1 engine 27 days.....		307 80	
	"	" 1 engine on material train 27 days.....		189 00	
	"	" 2 coaches 54 days.....		205 20	
	"	" 1 engine (extra) 2 days.....		14 00	
	"	" 1 shanty car 27 days.....		54 00	
	"	" 3 flat cars 81 days.....		162 00	
588	"	" car moving freight 1,300, ½.....		49 50	
	"	" paint brush, 1.00; 74 cords wood, 54.00.....		55 00	
	"	" dressing lumber.....		1 75	
	"	" 425 lbs. bolts & nuts, 6 c.....		25 50	
	"	" 160 lbs. iron clamp.....		9 60	
	"	" 265 lbs. " c. pins.....		10 60	
	"	" 75 lbs. bolts for turn-table.....		4 50	
	"	" switch bars & fixtures.....		16 68	
	"	" track gauge.....		2 00	
	"	" chisel.....		2 00	
	"	" 25 lbs. white lead.....		3 75	
	"	" ½ gal. oil.....		50	
	"	" ½ " (Japan).....		50	
	"	" 263 lbs. bolts, 6 c.....		15 78	
	"	" blacksmith & striker 9½ days...		47 50	
	"	" machinist Frazer & lathe 2 days..		10 00	
	"	" " Olatt 2 days.....		10 00	
	"	" " Howie 2 days		6 00	1,303 16
Sept.	30.	" 1 engine on material train 25 days.....		175 00	
	"	" 1 engine on nail train 25 days...		285 00	
	"	" 1 coach 25 days		95 00	
	"	" 1 " 11 "		41 00	
	"	" 3 flat cars 75 days		150 00	
	"	" 1 shanty car 25 days.....		50 00	
	"	" cars moving freight 3,777 miles, 1½		56 55	
	"	" expenses on turn-table iron....		49 49	
	"	" " " scales		15 40	
	"	" 13 cords wood, 2.25 c.		29 25	
589	"	" 346 lb. bolts, 6 c.		14 76	
	"	" 3 track gauges, 3.00.....		9 00	
	"	" machinist 1½ day.....		5 00	
	"	" blacksmith & ass't 2½ days.....		11 50	986 95

1878.							
Sept.	30.	To freight acc't paid					369 27
Oct.	31.	" pay-roll during month of October					380 18
							$13,263 36
Sept. 30, '78.		By 83 tons of iron @ 45					3,735 00
							9,528 36
		Int. all'd				1,040 00	
		Int. on 3,735				283 25	
							756 75
							$8,771 61

590 Spartanburg & Asheville Railroad Co. in account with Spartanburg, Union & Columbia R. Road Co.

1877.						
Feb.	17.	By cash paid to D. R. Duncan, pres.				$2,300 00
"	26.	" cash	"	"	"	1,330 00
"	23.	" cash	"	"	"	370 00
March	13.	" cash	"	"	"	1,000 00
June	15.	" cash	"	"	"	500 00
June	12.	" cash	"	"	"	2,833 46
June	29.	" cash	"	"	"	5,000 00
June	13.	" cash	"	"	"	5,000 00
July	12.	" cash	"	"	"	7,000 00
Nov.	9.	" cash	"	"	"	1,400 00
Nov'r	28.	" cash	"	"	"	1,600 00
Sept.	11.	" cash	"	"	"	1,255 00
1878.						
Feb.	5.	" cash	"	"	"	2,500 00
"	19.	" cash	"	"	"	400 00
March	19.	" cash	"	"	"	500 00
"	28.	" cash	"	"	"	600 00
						33,588 46

The above amount to bear interest at the rate of 10 per cent. per annum from the date of the advancements, respectively.

Three notes executed by the S. & A. R. Road Co. to the S., U. & C. R. Road Co., and endorsed by the S., U. & C. R. Road Co., to John H. Inman, amounting in the aggregate to seventy thousand
591 dollars, a copy of which notes is filed with this paper.

The S. & A. R. Road Co. are entitled to a credit of seven hundred and seventy-five dollars on the above notes.

To secure the payment of the above cash advances and notes, together with on account for car services and materials (said account to be hereafter furnished), the S. & A. R. Road Co. hypothecated with the S., U. & C. R. Road Co. two hundred and twenty-four thousand dollars of its first mortgage bonds, with interest coupons, commencing with coupons due Jan'y 1st, 1878, seven per cent coupons.

Copy.

We having this day deposited with John H. Inman of the city of New York, as collateral security for the payment of the principal and interest of three certain promissory notes hereinafter named, two hundred and twenty thousand dollars of the first mortgage bonds of the Spartanburg & Asheville Railroad Company, do
592 hereby fully authorize and empower said John H. Inman, or his lawful representative, on failure of payment of either or all of said [notes] at maturity, and according to the tenor of the same to sell said bonds at public sale, first giving ten days' notice thereof, and to assign and deliver them upon such sale. And after deducting all legal or other costs and expenses for collection, sale, and delivery, to apply the residue of the proceeds of such sale or sales so to be made to the payment of any or all of said notes, or such portions of them as he shall deem proper to apply it, returning any overplus to the undersigned.

The said notes are as follows:

One dated May 7th, 1878, for the sum of twenty thousand dollars; one dated May 22d, 1878, for the sum of twenty-five thousand dollars, and one dated June 6th, 1878, for the sum of twenty-five thousand dollars. All of said three notes are due and payable at twelve months from the respective dates named, with interest thereon,
593 to —, or bearer, and have been executed to him for a loan to *to* the aggregate amount of the same by the Spartanburg & Asheville Railroad Company, and endorsed by the Spartanburg, Union & Columbia Company, of S. C., and which said companies are officially represented by the undersigned, respectively.

Dated at the city of New York, this 7th day of May, 1875.

(Signed) THE SPARTANBURG, UNION & COLUMBIA RAILROAD COMPANY,
By R. Y. McADEN, *Pres't.*
THE SPARTANBURG & ASHEVILLE RAILROAD COMPANY,
By D. R. DUNCAN, *Pres't.*

594 *Copy.*

$20,000. SPARTANBURG, S. C., *7th May*, 1878.

One year after date the Spartanburg and Asheville Railroad Company promises to pay to the Spartanburg, Union & Columbia Railroad Company, or bearer, the sum of twenty thousand dollars with interest from date, at the rate of 12 per ct. per annum until paid, value received, payable at the office of Inman, Swann & Co., New York.

(Signed) THE SPARTANBURG & ASHEVILLE, RAILROAD COMPANY,
By D. R. DUNCAN, *Pres't.*
Attest: WM. K. BLAKE,

(Corporate seal attached.)

Sec't'y & Treas'r.

Endorsed: The Spartanburg, Union & Columbia Railroad Company, by authority of law and by special resolution of its board of directors, passed April 24th, 1878, hereby endorse and guarantee payment of the within note. (Signed) The Spartanburg, Union & Columbia Railroad Company, by R. Y. McAden, pres't. Attest: F. H. Counts, sec't'y & treas.

595 $25,000.00 SPARTANBURG, S. C., *May 22d*, 1878.

One day after date the Spartanburg and Asheville Railroad Company promise to pay to the Spartanburg, Union & Columbia Railroad Company, or bearer, the sum of twenty-five thousand dollars, with interest from date at 12 per ct. per annum until paid, value rec'd, payable at the office of Inman, Swann & Co., New York.

(Signed) THE SPARTANBURG & ASHEVILLE RAILROAD COMPANY,
By D. R. DUNCAN, *Pres't.*

Attest: WM. K. BLAKE, *Sec'ty & Treas.*

(Corporate seal attached.)

Endorsed: "Copy." The Spartanburg Union & Columbia Railroad Company, by authority of law and by special resolution of its board of directors, passed April 24th, 1878. hereby endorse and guarantee payment of the within note. (Signed) The Spartanburg, Union & Columbia Railroad Company, by R. Y. McAden, pres't. Attest: F. H. Counts, sect'y & treas.

596 $25,000.00. SPARTANBURG, S. C., *June 6th*, 1878.

One year after date the Spartanburg and Asheville Railroad Company promise to pay to the Spartanburg, Union & Columbia Railroad Company, or bearer, the sum of twenty-five thousand dollars, with interest from date, at 12 per ct. per annum until paid, va'ue rec'd, payable at the office of Inman, Swann & Co., New York.

(Signed) THE SPARTANBURG & ASHEVILLE RAILROAD COMPANY,
By D. R. DUNCAN, *President.*

Attest: (Signed) WM. K. BLAKE, *Sec'y and Treas.*

(Corporate seal attached.)

(Endorsed same as others.)

597 $500.00. SPARTANBURG, So. CA., *Jan'y. 5th*, 1879.

On the 5th day of January, 1879, The Spartanburg and Ashville Railroad Company promises to pay to the order of Joseph Foster five hundred dollars, value rec'd, with interest from the fifth day of Jan'y, 1877, at the rate of twelve per centum per annum, said interest to be paid annually, and have deposited with the said Joseph Foster as collateral security one thousand dollars of the

first mortgage bonds of the Spartanburg & Asheville Railroad Company, viz, two bonds of five hundred dollars each, Nos. 31 and 32, first coupons on said bonds due Jan'y, 1878, and it is agree- that should this note not be paid at maturity, then the said Joseph Foster shall have the right to sell the said collateral bonds at public or private sale, without advertisement, and apply the proceeds of sale to the payment of this note, and should any part remain unpaid, that The Spartanburg and Asheville Railroad Company agrees to pay interest on said remainder at the rate of twelve per centum per annum.

[SEAL.] "THE SPARTANBURG & ASHEVILLE R. R. COMPANY,"
By D. R. DUNCAN, *President.*

Attest:
W. K. BLAKE, *Sec't'y and Treas'r.*

598 STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally appeared before me, D. C. Judd, as agent for the estate of Joseph Foster, deceased, who being sworn, makes oath that the above is a true copy of the original note held by Joseph Foster, dec'd, in his lifetime, and now the property of his estate; that no part of the principal or interest thereof has ever been paid either by discount or otherwise, and that the said principal sum and interest is now due to the estate of said Joseph Foster, dec'd, and remains wholly unpaid.

D. C. JUDD, *Agent.*

Sworn to before me, this 26th Sept., 1879.
[SEAL.] GEO. COFIELD,
Notary Public.

599 SPARTANBURG, S. C., *Jan'y 1st*, 1877.

Spartanburg and Asheville R. R. Co. to G. Cannon, Dr.

To note due 1st of Jan'y, 1879, & dated 1st Jan'y, 1877---	$500 00
To int. fr. 1st Jan'y, '77, to 25th Sept., '74, at 12 pr. ct----	165 00
Am't due 25 Sept., '79----------	$655 00

The above note secured by two first mortgage bonds of S. & A. R. R. Co., of five hundred dollars each, and being numbers 43 & 44 respectively.

STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally appeared before me G. Cannon, of the aforesaid State & county, who, being duly sworn, deposeth: That the Spartanburg and Asheville Railroad Company are truly and justly indebted to him in the sum of five hundred dollars, with interest at the rate of 12 pr. ct. per annum from the 1st of Jan'y, 1877, as evidenced by the note of said company above stated, & that he holds two first mortgage bonds of said railroad company as collateral to secure the pay-

ment of said note as above stated. That no part of said note or interest has been paid, & is still due & unpaid; the numbers and denominations of said bonds are as above.

G. CANNON.

Sworn to before me, this 25 Sept., 1879.

[SEAL.] BENJ. WOFFORD,
Notary Public.

600 $500. SPARTANBURG, S. C., *Jan'y 1st*, 1877.

On the first day of January, 1879, the Spartanburg and Asheville Railroad Company promise to pay to the order of Joseph Walker five hundred [dollars], value received, with interest from the first day of January, 1877, at the rate of twelve per cent. per annum, said interest to be paid annually, and have deposited with the said Joseph Walker, as collateral security, one thousand dollars of the "first mortgage bonds" of the "Spartanburg and Asheville Railroad Company," viz., two bonds of five hundred dollars each, No. 41 and No. 42, first coupons on said bonds due January 1st, 1878; and it is agreed that, should this note not be paid at maturity, then the said Joseph Walker shall have the right to sell the said collateral bonds at public or private sale, without advertisement, and apply the proceeds of sale to the payment of this note, and should any part remain unpaid, then the Spartanburg and Asheville Railroad Company agrees to pay interest on the remainder at the rate of twelve per centum per annum.

(Signed) THE SPARTANBURG & ASHEVILLE RAILROAD [COMPANY],
By D. R. DUNCAN, *President.*

Attest: ——— ———.

601 STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally came before me, Joseph Walker, who being duly sworn, makes oath that the within is a true copy of the original note held by him against the Spartanburg & Asheville Railroad, and that said railroad is justly indebted to him in the said sum of five hundred dollars, with — as therein stated, for which he has not rec'd payment either by discount or otherwise, & that the same remains wholly unpaid. That he holds two first mortgage bonds Nos. 41 & 42, respectively, for $500 each, as collateral, to secure the payment of said note & interest on same.

JOSEPH WALKER.

Sworn to before me, this 25 Sept., 1879.

JOHN H. MONTGOMERY, *Not. Pub.* [L. S.]

602 The Spartanburg & Asheville R. R. Co. to F. M. Tremmier, Dr.

One note for five hundred dollars, dated May 25, 1877, due first day of Jan. 1879, with interest at 12 per cent. per annum from date thereof	$500 00
Interest from May 25, 1877, to Oct. 1, 1879	$141 00

STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally appeared F. M. Tremmier, and made oath that the above stat- is correct, and that the amount above specified and evidenced by a true copy of the note hereunto attached, held by deponent, represents the indebtedness of said railroad company to deponent, no part of which has been paid by discount or otherwise; that deponent holds two first mortgage bonds of said railroad company, Nos. 33 & 34, for five hundred dollars each, as collateral to secure payment of said note and interest.

F. M. TREMMIER.

Sworn to before me, September 26, 1879.

S. T. McCRARY, [SEAL.]
Notary Public.

603 $500. SPARTANBURG, S. C., *May* 25, 1877.

On the first day of January, 1879, the Spartanburg and Asheville Railroad Company promise to pay to the order of F. M. Tremmier five hundred dollars, value received, with interest from the 25th May, 1879, at the rate of twelve per cent. per annum, said in*in*terest to be paid annually, and have deposited with the said F. M. Tremmier, a- collateral security, one thousand dollars of the "first mortgage bonds of the Spartanburg and Asheville Railroad Company," viz: Two bonds of five hundred dollars each, Nos. 33 & 34, first coupons of said bonds due January 1878; and it is agreed that should this note not be paid at maturity, then the said F. M. Tremmier shall have the right to sell the said collateral bonds at public or private sale without advertisement, and apply the proceeds of sale to the payment of this note, and should any part remain unpaid, then the Spartanburg & Asheville Railroad Company agrees to pay interest on said remainder at the rate of twelve per cent. per annum.

THE SPARTANBURG & A. R. R. [CO.],
[SEAL.] By D. R. DUNCAN, *President.*

Attest: WM. K. BLAKE.

604 500. SPARTANBURG, S. C., *January* 11*th*, 1877.

On the first day of January, 1879, the Spartanburg and Asheville Railroad Company promises to pay to the order of Jno. H. Evins five hundred dollars, value received, with interest from the 11th day of January, 1877, at the rate of twelve per centum per annum, said interest to be paid annually, and have deposited with the said John H. Evins as collateral security one thousand dollars of the "first mortgage bonds of the Spartanburg and Asheville Railroad Company," viz: Two bonds of five hundred dollars each, Nos. 37 and 38, first coupons on said bonds due January, 1878; and it is agreed that should this note not be paid at maturity, then the said John H. shall have the right to sell the said collateral bonds at pub lic or private sale without advertisement, and apply the proceeds of sale to the payment of this note, and should any part remain unpaid,

the- the Spartanburg and Asheville Railroad Company agree to pay interest on said remainder at the rate of twelve per cent. per annum.

THE SPARTANBURG & ASHEVILLE RAILROAD COMPANY,

[SEAL.] By D. R. DUNCAN, *President.*

Attest: WM. K. BLAKE, *Sec't'y & Treas'r.*

605 Spartanburg and Asheville Railroad Company to Jno. H. Evins, Dr.

To 1 note, Jan'y 11th, '77, $500.00, at 12 per ct. interest to 1st Oct., 1879, from July 11th, 1877, payable annually, $73.61 + $500 = 673.61.

STATE OF SOUTH CAROLINA, *Spartanburg County:*

Personally appeared before me John H. Evins, of the county & State aforesaid, who, being duly sworn, says: That the Spartanburg & Asheville Railroad Company is indebted to him in the sum of six hundred & seventy-three $\frac{61}{100}$ dollars, by note dated January 11th, 1877, a true copy of which is hereto attached, & that no part of the same has been paid, and that he is in nowise indebted to said company.

Deponent further says that he still holds the two "first mortgage bonds" of five hundred dollars each, Nos. 37 & 38, deposited with him by said company as collateral.

JNO. H. EVINS.

Sworn & subscribed before me, Sept. 29, 1879.

[SEAL.] S. J. SIMPSON,
Notary Public for South Carolina.

606 (Copy.)

$3,358.33. CHARLESTON, S. C., *July 1st*, 1878.

Four months after date we promise to pay to the Bank of Charleston National Banking Association, or order, without offset, negotiable and payable at the said bank, three thousand three hundred and fifty-eight $\frac{33}{100}$ dollars, for value received, with discount before and interest after maturity, at the rate of ten per cent. per annum, having deposited with said bank as collateral 12 bonds, $500 each, Nos. 68 to 79, inclusive, first mortgage, Spartanburg & Asheville R. R. Co. (no coupons detached), the said securities, or the moneys realized therefrom, to be held as collateral security *security* for this or any other indebtedness, either as drawer, endorser, or acceptor; and in case this or any other indebtedness shall not be paid when due, or on demand, we hereby give the said bank authority sell the said security, or any part thereof, for our account, at any time, at public or private sale, at its discretion, without advertising the same or giving us any notice, and to apply as much of the proceeds of said security to the payment of this or other indebtedness as may be necessary to pay the same, with all interest due thereon, and also to

the payment of all expenses attending the sale of the said
607 security. If the net proceeds of the said security shall not cover the amount due upon this or other indebtedness, hold ourselves bound to pay the balance forthwith after such sale, with interest at the rate of ten per cent. per annum; and in case the above collaterals decline in value at any time, and shall, upon request, verbal or written, fail to make good the margin, then said bank may proceed to sell as if this note had matured.

(Signed) THE SPARTANBURG & ASHEVILLE R. R. CO.,

[SEAL.] By D. R. DUNCAN, *Pres'd't.*

Witness:

WM. K. BLAKE, *Sec'y & Treas'r.*

608 CHARLESTON, So. Ca., *Sept.* 26, 1879.

Statement of note of The Spartanburg & Asheville Railroad Company held by Bank of Charleston National Banking Association, being a renewal of note dated April 21st, 1877.

Note dated July 1st, 1878, @ 4 mo's, $3,358.33.

Secured by 12 first mortgage bonds of the Spartanburg & Asheville R. R. Co., No's 68 to 79, inclusive. No coupons detached. Note bearing interest at 10 per cent. per annum.

T. A. HONOUR, *Cash'r.*

STATE OF SOUTH CAROLINA, } *ss:*
Charleston County, }

Personally appeared Theodore A. Honour, cashier of the Bank of Charleston National Banking Association, who being duly sworn, doth depose and say: That the above written is a true statement of the indebtedness of the Spartanburg and Asheville Railroad Company to said bank and the bonds held to secure the same; and further saith not. T. H. HONOUR, *Cash'r.*

Sworn to before me, this 27th day of September, A. D. 1879.

[SEAL.] LANGDON CHEVES,
Notary Public.

609 Statement of Claim A. S. Brown & Co. against Spartanburg & Asheville Railroad Company.

June 2d, 1877.	To note 12 months, due June 5th, 1878		568 35
	To interest @ 1 per cent. per month, 88.40; protest, 2.07		90 47
			658 82
Oct. 26th, 1877.	To note 12 months, due Oct. 29th, 1878	$354 77	
	To interest @ 1 per cent. per month, 38.31; protest, 2.07,	40 38	
			395 15
			$1,053 97

THE STATE OF SOUTH CAROLINA, *Charleston County:*

Personally appeared Andrew S. Brown, a member of the firm of A. S. Brown & Co., who, being duly sworn, says: That the foregoing is a true and correct statement of the indebtedness of the Spartanburg and Asheville Railroad Company to the firm of A. S. Brown & Co., and that the sum of one thousand and fifty-three $\frac{97}{100}$ dollars is now justly due & unpaid thereon; that the said indebtedness is secured by a pledge of two first mortgage bonds of said company, numbered 191 and 192, for one thousand each, with coupons attached, and due from the first January, 1878, and that said collaterals are now in possession of defendant's firm.

ANDREW S. BROWN.

Sworn to and subscribed before me, this 20th day of September, 1879.

[SEAL.] HENRY P. FOSTER,
Notary Public.

610 CHARLESTON, S. C., *Sept.* 23, 1879.

Spartanburg & Asheville R. R., in acc't Edwin Bates & Co.

May 22, '77. 12 mos.	To note due May 25, '78, bearing int. @ 1 per cent. per month after maturity	$621 45	
	74.56 18.64 5.94		
	Int. to date, 1 yr. 3 mos. & 29 days	99 14	
			720 59
Oct. 24, '77. 12 mos.	To note due Oct. 27, '78, bear- int. @ 1 per cent. per m. after maturity	$378 55	
	37.85 3.43		
	Int. to date, 10 mos. & 27 days	41 28	
			419 83
			$1,140 42

The above two notes secured by two first mortgage bonds of S. & and A. R. R. of one thousand dollars each, being numbers 189 & 190; first coupons due Jan'y 1st, 1878.

STATE OF SOUTH CAROLINA, *Charleston County:*

Personally appeared before Thomas R. McGahan, one of the firm of Edwin Bates & Co., who, being duly sworn, deposeth that the Spartanburg and Asheville Railroad Company are truly & justly indebted to the said firm of Edwin Bates & Co. for the above sum, amounting on the twenty-third day of September, eighteen
611 hundred & seventy-nine, to eleven hundred and forty $\frac{42}{100}$ dollars, and that no part of the same has ever been paid or satisfied.

THOMAS R. McGAHAN.

Sworn to before me, this September 23d, 1879.
[SEAL.] HENRY P. FOSTER,
Notary Public.

612 The Spartanburg & Asheville Railroad Co. to Rob't Wilson, Dr.

1877 & 1878. To balance on salary as overseer at stockade S. & A. R. R., at $26.00 per month------ $120 00

STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally came before me, Rob't Wilson, who, being duly sworn, makes oath that the Spartanburg & Asheville Railroad Company are justly indebted to him for balance on wages due as overseer of stockade S. & A. R. R., during the years 1877 & 1878, in the sum of one hundred & twenty dollars, as above stated, and that he holds as collateral security to secure the above am't two 1st mortgage bonds of said railroad, Nos. 1 & 2, for $100 each.

That the sum above stated has not been paid by discount or otherwise.

ROB'T WILSON.

Sworn to before me, this 16 Oct., 1879.
[SEAL.] JOHN B. CLEVELAND, *Not Pub.*

613 STATE OF N. C., *Henderson Co.:*

This day appears before me, T. A. Allen, and maketh oath that the Spartanburg and Asheville Railroad Company is indebted to him in the sum of two hundred and seventy-seven dollars and eighty cents, with interest on the same at 6 per cent. from the 30th day of September, 1878, and the sum of eighty-three dollars and fifty cents, with interest on said sum, at 6 per cent. from the 20th day of September, 1878; that said sums were contracted for supplies furnished said company, and are evidenced by a due bill and order signed by A. Tanner, superintendent, at the date above expressed; that he has commenced suit in the supreme court of said county for the recovery of said indebtedness, and that the same is still pending; that he has no other lien than that allowed by act of Assembly, ratified the 1st day of March, 1873, chap. 131, sec. 3, as he is informed.

T. A. ALLEN,

Sworn & subscribed to, this the 23rd day of Sept., 1879.
[SEAL.] C. M. PACE,
C. S. C., Henderson County, N. C.

614 STATE OF NORTH CAROLINA, *Henderson County:*

I, C. M. Pace, clerk of the superior court in and for said county, do hereby certify that on the 26th day of August, 1879, T. A. Allen commenced a suit against the Spartanburg & Asheville Railroad Company, by the issuing of summons returnable at spring term,

1879, which summons was executed on said company, and the suit is now pending, this 30th day of September, 1879.

C. M. PACE,
S. C. C., Henderson County.

615 STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally appeared before me A. Tanner, who, being duly sworn, makes oath that the Spartanburg & Asheville Railroad Company is justly indebted to him in the sum of of one thousand and thirty-six $\frac{92}{100}$ dollars, for balance due to him on account of salary as superintendent of convicts, and for carts, blacksmith tools, & 4-horse wagon for said railroad company.

That said balance as above stated is still due & unpaid by said railroad company, by discount or otherwise.

A. TANNER.

Sworn to before me, this 30 Sept., 1879.
[SEAL.] BENJ. WOFFORD, *Not. Pub.*

616 The Spartanburg & Asheville Railroad Company to Joseph Davis, Dr.

1877. To one cow killed by the engine & cars of Spartanburg & Asheville Railroad Company ---------- $18 00

Personally came before me Joseph Davis, who, being duly sworn, makes [oath] that the above account is correct; that the engine of the said railroad company did on the 4th day of Sept. run over & kill one cow, the property of said Davis. That said cow was duly appraised to be worth the sum of eighteen dollars; that no part of the same has been paid, but is still due and unpaid to this deponent.

J. F. DAVIS.

Sworn to before me, 29 Sept., 1879.
[SEAL.] BENJ. WOFFORD, *Not. Pub.*

617 STATE OF SOUTH CAROLINA, *County of Spartanburg:*

$22.43.

Personally came before me J. Bankston Davis, who, being duly sworn, makes oath that the Spartanburg and Asheville Railroad Company is justly indebted to him in the sum of nine dollars & 18 cts., balance due on one five hundred miles ticket bought by him from the treasurer of said road, & which deponent could not use on account of Receiver James Anderson declining to accept the same for fare on said road; said ticket was bought June 17th, 1878, & is hereto attached; also, said road is indebted for balance on cross-ties in sum of thirteen dollars and twenty-five cents, making in the aggregate the sum of twenty-two $\frac{43}{100}$ dollars, no part of which has been paid, but is still due & owing to deponent.

JNO. BANKSTON DAVIS.

Sworn to before me, this 17 Sept., 1879.
[SEAL.] D. R. DUNCAN, *Not. Pub.*

618 CHARLESTON, S. C., *April* 21*st*, 1877.

$5,000.

The Spartanburg & Asheville R'l R'd Co., twelve months after date, without grace, promise to pay to The People's National Bank, of Charleston, or order, at said bank, five thousand dollars for value received, with interest at the rate of ten per cent. per annum after date, payable semi-annually, having deposited with and as collateral security therefor and for *and for* any other indebtedness which may now exist, or may hereafter accrue from me to said bank, twenty bonds, No. 80 to 99 inclusive, $500 each, of Spartanburg & Asheville Railroad Co. 1st mortgage, (coupon attached,) which it hereby authorizes him to sell without notice at public or private sale, at his option, in case of the non-performance of this promise, applying the net proceeds to the payment of this note, including interest, and to any other indebtedness then existing from me to said bank and accounting to it for the surplus, if any. In case of deficiency it promise- to pay to him the amount thereof forthwith after such
619 sale, with interest upon the amount unpaid, at the rate above specified.

THE SPARTANBURG & ASHEVILLE
R'L R'D CO.,
By D. R. DUNCAN, *President.*

A true copy:
H. G. LEPER, *C.*

THE STATE OF SOUTH CAROLINA, *Charleston County:*

Before me personally appeared, H. G. Leper, cashier of The People's National Bank, who being duly sworn, says: That the Spartanburg & Asheville Railroad Company is indebted to said bank in the sum of five thousand dollars, with interest thereon at the rate of ten per cent. per annum, from the twenty-first day of April, A. D. 1877, with interest thereon from the said twenty-first day of April at the rate of ten per cent. per annum, payable semi-annually, in and by its promissory note, which is annexed to this affidavit. That no part of the principal or interest has been paid to said bank in any way.

That said note has as security twenty bonds of the Spartanburg and Asheville Railroad Company, numbered from eighty (80) to ninety-nine (99) inclusive, each for five hundred dollars, with all coupons attached, secured by a first mortgage of said railroad.

H. G. LEPER, *C.*

Sworn to, this 19th Sept., 1879.
[SEAL.] CHARLES H. SUMPTER, *Not. Pub.*

620 *Final Settlement of Account of Rice & Coleman with S. & A. R. Road Co.*

1878.

August.	To final estimate of work done on S. & A. R. Road, May 1, 1878		$115,280 82
	By amount paid in Henderson county bonds to August, 1878	$79,400 00	
	Balance due in bonds	35,880 82	
			$115,280 82
	To balance of bonds	$35,880 82	
	Less ⅓ to reduce bonds to cash	11,960 27	
	Amount bal. due in cash		$23,920 55
	By balance on settlement of petty accounts due by Rice & Coleman to S. & A. R. Road Co.	$985 32	
	Bal. due to Rice & Coleman on final settlement of ac'ts for work done on Gr. river division	$22,935 23	
			$23,920 55

E. & O. E., August, 1878.

[SEAL.] WM. K. BLAKE,
Sec'y & Treas'r.

621 The Spartanburg and Asheville Railroad Company to D. R. Duncan, Dr.

Salary as president from August, 1875, to 1st Oct., 1878, at $2,500 per annum		$7,961 66
By cash rec'd on salary 1875, 1876, 1877, and 1878		3,947 72
Balance due Oct. 1st, 1878		$3,968 94

STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally appeared before me D. R. Duncan, who, being sworn, says that he was elected president of the Spartanburg and Asheville Railroad Company, August, 1875, and that his salary was fixed by said company at $2,500 per annum, & that he has served as president of said company ever since said August, 1875. That the sum above stated of three thousand nine hundred and sixty-eight dollars & ninety-four cents was & is still the balance due him on said salary up to 1st of October, 1878, as above stated, by the said Spartanburg & Asheville Railroad Company, & for which he holds no security.

D. R. DUNCAN.

Sworn to before me, Oct. 16, 1879.

[SEAL.] BENJ. WOFFORD,
Not. Pub.

622 Statement of account of J. M. Coffin, State supervisor of contracts, with Spartanburg & Asheville R. Road Co.

For services as State supervisor from Nov. 23, '75, to April 23, '77, 17 months, $100		$1,700 00
By am't paid as per vouchers to Aug., '76	$355 65	
" am't paid as per vouchers to Aug., '77	898 24	
" board, 17 months, @ $10	170 00	
" lost time, as reported by him	134 00	
Balance due	148 00	

The above is a correct statement of account of J. M. Coffin with S. & A. R. R. Co.

WM. K. BLAKE,
Sec'y & Treas'r.

623 Statement of account of J. H. Falkner with Spartanburg & Asheville R. Road Co.

For 89¾ cord engine wood, reported by Maj. Anderson, sup't S. & A. R. R. Co., @ 75c.		$67 39
By am't paid	$16 00	
" " "	1 30	
		$17 30
Balance due		$50 00

The above statement is correct.

WM. K. BLAKE,
Sec'y & Treas'r.

624 Statement of account of Tom Hiatt, employee on engineer corps, with Spartanburg & Asheville R. Road Co.

For balance due for services, as reported by chief engineer, Oct., 1878 ---- $53 07

The above is a correct statement of bal. due Tom Hiatt, as reported by chief engineer.

WM. K. BLAKE,
Sec't'y & Treas.

625 R. J. F. Wall, B. F. Alverson, in account with Spartanburg & Asheville R. R. Co.

1877. By two [hundred] (200) cross-ties, at 25 cts. each ---- $50 00

The above is a true statement of acc. of Wall & Alverson with S. & A. R. Road Co.

WM. K. BLAKE,
Sec't'y & Treas'r.

THE STATE OF SOUTH CAROLINA, *County of Spartanburg.*

Personally came before me R. J. F. Wall, and makes oath that the annexed am't of fifty dollars is justly due him for balance on crossties furnished to the Spartanburg and Asheville R. R. Company by deponent and B. F. Alverson, and that said amount is still due & unpaid.

R. J F. WALL.

Sworn to before me, this 15th Sept., 1879.
[L. S.] D. R. DUNCAN,
Not. Pub.

626 "Copy."

Spartanburg & Asheville R. Road Co. to E. Clayton, Dr.

For amounts due by S. & A. R. Road Co. to sub-contractor for work on S. C. division, said amounts in form of drafts, accepted by sec't'y & treas. on settlement with the sub-contractors, in favor of E. Clayton, as follows:

Accepted draft from J. A. McDowell	$100 00
Accepted draft from T. T. Dalton	84 95
Accepted draft from W. G. Corpening	50 00
	$234 95

Amounting to two hundred and thirty-four & $\frac{95}{100}$ dollars.
[SEAL.] WM. K. BLAKE,
Sec't'y & Treas'r.

627 The Spartanburg & Asheville Railroad Company to Thos. Symons, Dr.

June 1st, 1878, to Oct. 1st, 1878.	To balance due for services as clerk at stockade	$100 00
Nov. 1st, 1877.	To order of J. M. Jones, supervisor convicts	132 00
		$232 00

STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally came before me Thomas Symons, who, being sworn, says: That the above amount of two hundred and thirty-two dollars is justly due him from the S. & A. R. R. Company, as above stated; that he has not rec'd payment of the same nor any part thereof.

THOS. SYMONS.

Sworn to before me, this 17th Nov., 1879.
[SEAL.] D. R. DUNCAN, *Not. Pub.*

628 STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Noah Wolf in account with Spartanburg & Asheville R. Road Co.

By 302 cross-ties furnished S. & A. R. Road Co., at 25		$75 50
To amount paid as per voucher No. 29	$33 20	
" " " " " No. 54	5 00	
April, Am't bal. due Mr. Wolfe	37 30	
1877.		75 50

The above is a correct statement of account of Noah Wolfe with S. & A. R. Road Co., Oct. 1, 1878.

WM. K. BLAKE,
Sec't'y & Treas'r.

THE STATE OF NORTH CAROLINA, *County of Spartanburg:*

Personally came before me Noah Wolfe, who, being sworn, says that the above am't of thirty-seven $\frac{30}{100}$ is the balance justly due him for cross-ties, and that he has not received payment of the same nor any part thereof, and that same is still due by the S. & A. R. R. Co.

NOAH WOLFE.

Sworn to before me, this 17th Nov., 1879.
[SEAL.] D. R. DUNCAN, *Not. Pub.*

629 Copy.

Estimate. S. & A. R. R. Co., Fry & Deal, contractors:

1,576 oak ties, at 25c.		$394 00
787 chestnut, at 18c.		141 66
Distributing 810 ties, at 2c.		16 20
		$551 86

Approved. T. COLEMAN, *Chief Engineer.*

Ap'l 30, 1878.	By cash on above ties	$400 00	
Oct. 22, 1878.	" " for distributing 810 cross-ties	16 20	
			416 20
			$135 66

Aug. 8, 1878. Inspected for Fry & Deal, cross-ties	189
Sept. 28, 1878. Inspected for Fry & Deal, at 20c.	568
Whole number, at 20c	757

No estimate of these ties was ever returned to the office at Spartanburg.

T. COLEMAN,
Chief Engineer.

Nov. 4th, 1878.

630 Mr. J. A. Bush's account for cross-ties to Spartanburg & Asheville R. Road Co.

1877.

For 230 cross-ties, @ 25c. $57 50

The above is a true statement of amount due J. A. Bush by S. & A. R. Road Co.

WM. R. BLAKE, *Sec't'y & Treas'r.*

Mr. J. W. Pope's account for cross-ties furnished to Spartanburg & Asheville R. Road Co.

1877.

For cross-ties, 548, @ 25c.		$137 00
By cash paid as per vouchers	$100 00	
" " "	5 00	
" " "	20 00	
		125 00
Balance due J. W. Pope		$12 00

The above is a true statement of balance due J. W. Pope by S. & A. R. Road Co.

WM. K. BLAKE, *Sec't'y & Treas'r.*

STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally appeared before me, J. A. Bush, who, being sworn, makes oath that the account hereto attached for fifty-seven $\frac{50}{100}$ dollars, for 230 cross-ties, at 25cts. each, is justly due to him by the Spartanburg & Asheville Railroad Company, and that the account of twelve dollars, balance due to J. W. Pope, by the said railroad company, is also true and correct, and that the same has not been paid either to himself or to said J. W. Pope.

his
J. A. x BUSH.
mark.

Sworn to before me, 8th Nov., 1879.

[SEAL.] JOHN B. CLEVELAND, *Not. Pub.*

631 The Spartanburg & Asheville R. R. Co., to J. B. Tanner, Dr.

1 Oct., 1878. To balance due, as clerk at stockade $442 00

I do certify that the above amount is due J. A. Tanner, as clerk services at stockade S. & A. R. R., up to Oct. 1, 1878.

D. R. DUNCAN, *Pres't.*

632 SPARTANBURG, S. C., *Sept. 19th*, 1879.

S. & A. R. R'd Co.:

1877. Bought of I. H. Cantrell & Co.

May	19.	To 1 pipe scraper	1 00	
		" 13 lbs. pump iron	78	
		" making same	5 50	
		" sharpening 200 spikes	6 00	
		" 4 wrenches	4 00	
		" 2 guages	2 50	
		" 2 corking chisels	1 00	
	25.	" 2 large wrenches	4 50	
	31.	" work on picks	3 50	
	"	" 135 lbs. iron	5 20	
June	9.	" 11 lbs. " for switch	55	
	"	" making same	1 00	
	15.	" trunk for water-tank	5 00	
July	9.	" iron for splicing car axle	1 00	
	"	" work on same	41 50	
	23.	" sharpening 5 kegs spikes	15 00	
	"	" piercing 54 bolts	10 80	
	26.	" 188 lbs. bolts	20 00	
Aug.	18.	" pick handlen, 35	35	
		" laying pipe on R. R'd	5 00	
	24.	" clamp for switch	1 25	
Oct.	15.	" lay, pick, 25, & fix bumper iron, 1.50	1 75	
		" 1 cold chisel, 25, and sharp chisel, 10	35	
	17.	" laying 13 ends picks	6 00	
	"	" work on pump	1 00	
				103 53
633	Aug. 8.	Credits by F. T. Cantrell's freight	8 10	
	May 24.	" " cash	50 00	
July	18.	Credits by tickets to A. Tanner	6 00	
Aug.	19.	" " " I. H. Cantrell	3 50	
				67 60
		Bal. due		$35 95

STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally came before — F. T. Cantrell, of the firm of I. H. Cantrell & Co., who, being duly sworn, makes oath and says that the above account of thirty-five $\frac{95}{100}$ dollars is the balance due to the said firm by the Spartanburg & Asheville railroad, as above specified; that no part of said balance has been paid by discount or otherwise.

I. H. CANTRELL & CO.,
By F. T. CANTRELL.

Sworn to before me, this 20th day of Sept., 1879.

[SEAL.] JOHN B. CLEVELAND,
Not. Pub.

634 The Spartanburg & Asheville R. R. Co. to B. F. Bush, Dr.

1877. To balance on acct. for cross-ties $71 91

STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally appeared before me B. F. Bush, who, being sworn, says: That the Spartanburg & Asheville Railroad Company is justly indebted to him in the sum of seventy-one $\frac{91}{100}$ dollars, being the balance due him for cross-ties in 1877 on the S. & A. R. R.; that the same has not been paid & is still due him.

B. F. BUSH

Sworn to before me, this 1 Nov., 1879.
[SEAL.] CHAS. P. WOFFORD, *Not. Pub.*

I hereby certify that the above am't of $71\frac{91}{100}$ is due B. F. Bush, being balance for cross-ties furnished S. & A. R. R. Co. in 1877.

D. R. DUNCAN, *Pres't.*

635 Hall & Alverson, in account with Spartanburg & Asheville R. Road Co.

By 371 cross-ties	92 75	
240 cross-ties	60 00	
		$152 75
To payment as per voucher	$15 00	
" " "	15 00	
" " by D. R. Duncan, pres.	20 00	
		50 00
		$102 75

The above is a true statement of account of Hall & Alverson with S. & A. R. Road Co., Nov., '79.

WM. K. BLAKE,
Sec't'y & Trea'r.

THE STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally appeared before me T. J. Hall, and makes oath that the Spartanburg & Asheville railroad is indebted [to] him & W. M. Alverson in the sum of one hundred & two $\frac{75}{100}$ [dollars], being balance due upon account for cross-ties furnished to said road in the year 1877; that no part of said balance has been paid, but is still due & owing to deponent & said Alverson jointly.

T. J. HALL.

Sworn to before me, this 15 Sept., 1879.
[SEAL.] JOHN B. CLEVELAND, *Not. Pub.*

636 SPARTANBURG, S. C. *Sept.* 19, 1878.

Spartanburg & Asheville R. R. to Spartanburg Herald, Dr.

1875.			
March	2.	To adv. 5 sq's two months	8 75
	31.	" " 5 " " "	8 75
May	5.	" " 5 " " "	8 75
	31.	" printing 300 election tickets	3 50
July	7.	" adv. 6 sq'rs two months	10 50
	21.	" " 4 " three "	10 00
1876.			
Jan.	17.	To adv. 3 sq'rs 4 times	7 50
July	12.	" " 2 " 3 "	5 00
"	19.	" " 1 " cross-ties	15 00
1879.			
June	6.	To adv. 6 notices to the public	20 00
July	12.	" printing posters	2 50
	25.	" adv. stockholders' meeting	5 00
Aug'st	8.	" " notice of one fare	1 00
1878.			
Aug't	7.	To adv. excursion 2st, 2t	3 50
Sept.	4.	" " 1 squ. 3t.	2 50
			$112 25
Cr. by 1,000 mile tickets			15 00
Bal. due			97 25

STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally came before me R. J. Daniel, of *of* the proprietors of the Spartanburg Herald, who, being duly sworn, says: That the annexed account of ninety-seven dollars and twenty-five cents
637 is just, & that the Spartanburg & Asheville Railroad Company is indebted to the Spartanburg Herald newspaper in the aforesaid sum of money, which remains wholly unpaid, & that he is in nowise secured by said R. Road Company for the same.

R. J. DANIEL.

Sworn to before me, this 25 Sept., 1879.

[SEAL.] GEO. W. NICHOLLS,
Notary Public.

638 Spartanburg & Asheville Railroad Co. to B. F. Walker, Dr.

To on salary and medicine as physician at stockade, S. & A. R. R. Co. $610 13

STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally came before me Dr. B. F. Walker, who, being duly sworn, makes oath that the Spartanburg & Asheville Railroad Company is justly indebted to him in the sum of six hundred & ten $\frac{13}{100}$

dollars for balance on salary & medicine as physician at stockade of S. & A. R. R. for the years 1876, 1877, & 1878. That the said sum is unpaid and due him by said company.

B. F. WALKER.

Sworn to before me, this 29 Sept., 1879.
[SEAL.] BENJ. WOFFORD, *Not. Pub.*

639 Statement of account of W. H. West with the S. & A. R. Road Co. for cross-ties furnished.

106 cross-ties, at 25c., per engineer's report	$26 50
By cash	10 00
	$16 50

The above is a correct statement of account of W. H. West with S. & R. Road Co. for cross-ties furnished.

WM. K. BLAKE, *Sec'y & Treas'r.*

STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally came before me W. H. West, who, being duly sworn, makes oath that the Spartanburg and Asheville Railroad Company is indebted to him in the sum of sixteen $\frac{50}{100}$ dollars for balance due on cross-ties; that no part of the same has been paid.

W. H. WEST.

Sworn to before me, this 29 Sept., 1879.
[SEAL.] BENJ. WOFFORD, *Not. Pub.*

640 Statement of account of J. P. West with S. & A. R. Road Co. for cross-ties furnished.

207 cross-ties, at 25, reported by engineer	$51 75

May 16th, 1877.

The above is a correct statement of account of J. P. West with S. & A. R. Road Co. for ties furnished.

WM. K. BLAKE, *Sec'y & Treas'r.*

THE STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally come before me J. P. West, who, being duly sworn, makes oath that the within account for cross-ties furnished to the Spartanburg & Asheville railroad is just and correct, and that said railroad company is justly indebted to him for them in the sum of fifty-one $\frac{75}{100}$ dollars, no part of which has been paid.

J. P. WEST.

Sworn to before me, this 29 Sept., 1879.
[SEAL.] BENJ. WOFFORD, *Not. Pub.*

641 Spartanburg & Asheville Railroad Co. to J. B. O. Landrum, Dr.

August, '76.	300 cross-ties, lot No. 1	$80 00	
Nov., '76.	3,095 " " 2	788 75	
April, '77.	1,238 " " 3	309 50	
			$1,178 25
Nov., '76.	382 rejected ties, at 15c.	57 39	
April, '77.	11 " 15c.	1 65	
			58 95
July 4, '78.	6 cords engine wood, at $1.12½	6 75	
July 18, '78.	16 " " "	18 00	
Sept. 10, '78.	6 " " "	7 75	
			31 50
			$1,268 70
Sept., '76.	By cash and stock, as per vouchers	$80 00	
Dec'r. '76.	cash and stock, as per vouchers	788 75	
May, '77.	cash, as per vouchers	226 55	
July, '78.	cash for engine wood, as per voucher	6 75	
			1,102 05
	Bal. due		$166 65

The foregoing is a correct statement of account of Dr. J. B. O. Landrum with the S. & A. R. Road Co.

[SEAL.] WM. K. BLAKE,
Sec'y & Treas. S. & A. R. Road Co.

STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally came before me J. B. O. Landrum, who, being duly sworn, says: That the above account of one hundred and sixty-six $\frac{65}{100}$ [dollars] is just and owing to him, and no part thereof has been paid.

J. B. O. LANDRUM.

Sworn to before me, this 22d Sept., 1879.

[SEAL.] D. R. DUNCAN, *Not. Pub.*

642 STATE OF SOUTH CAROLINA, *County of Spartanburg:*

M. L. WILLIAMS
against
SPARTANBURG & ASHEVILLE RAILROAD COMPANY.

The Spartanburg & Asheville Railroad Company to M. L. Williams, Dr.

1877.	To 423 cross-ties, at 25 cts. each	$105 75
1877.	By cash	15 75
		$90 00

SOUTH CAROLINA, *County of Spartanburg:*

Personally appeared before me M. L. Williams, who, being sworn, deposes that The Spartanburg & Asheville Railroad Company is justly indebted to him in the sum of ninety dollars as above specified, for balance due on cross-ties furnished to said road, and that the same is now due & unpaid.

M. L. WILLIAMS.

Sworn to before me, this 25th Sept., 1879.
[SEAL.] G. W. COFIELD, *Notary Pub.*

643 Statement of account of J. B. Rose with S. & A. R. Road Co. for services as track overseer.

1878. For 22 days' service, @ $1.30		$28 60
" " " " of son, @ 17½ cts.		3 85
		$32 45

The above is a correct statement of account of J. B. Rose with S. & A. R. Road Co. for services as track overseer.

W. K. BLAKE,
Sec'y & Trea'r.

STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally appeared before me J. B. Rose, who makes oath that the above account of thirty-two $\frac{45}{100}$ dollars is just and due to him by the said Spartanburg & Asheville Railroad Company, and has not been paid.

J. B. ROSE.

Sworn to before me, this 29th Sept., 1879.
BENJ. WOFFORD, *Not. Pub.*

644 The Spartanburg & Asheville Railroad Co., Dr., to F. Cantrell.

1877.		
June 12. To distributing cross-ties, 3,885, at 1¾ cts.		$68 00
June 18. To furnishing 43 cross-ties, at 25 cts.		10 75
July 1, 1877, to July 11th, 1878. To 282 cords of wood, at $1.25		352 50
		$431 25
1877 & 1878. Credit by freight acc & fare		102 85
Balance due		$328 40

THE STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally came before me F. Cantrell, and who, being sworn, makes oath that the above account of three hundred and twenty-eight dollars & forty cts. is justiy due & owing to him by The Spar-

tanburg & Asheville Railroad Company as above itemized, and that he has never in any manner rec'd payment of the same.

FIELDING CANTRELL.

Sworn to before me, this 19th Sept., 1879.

[SEAL.] CHAS. P. WOFFORD, *Not. Pub.*

645 Statement of account of J. B. Ballinger with S. & A. R. Road Co. for cross-ties furnished.

To 280 cross-ties furnished August, 1877, at 25 cents------ $70 00

The foregoing is a correct statement of account of J. B. Ballinger with S. & A. R. Road Co. for cross-ties furnished.

WM. K. BLAKE,
Sec't'y & Treas.

STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally came before me J. B. Ballinger, who makes oath that the above account for cross-ties furnished to said railroad company is just & true; that he has not received any part of same by discount or otherwise, & that the said railroad company is indebted to him in said sum of money.

J. B. BALLINGER.

Sworn to before me, this 27th Sept., 1879.

[SEAL.] BENJ. WOFFORD, *Not. Pub.*

646 Statement of account of A. C. Davis with S. & A. R. Road Co. for engine wood furnished to said road.

To engineer's return of wood furnished Sept. 21, '78, 14 cords, at 1.00---------- $14 00

The above is a correct statement of account of A. C. Davis with S. & A. R. Road Co. for engine wood furnished.

WM. K. BLAKE,
Sec't'y & Treas'r.

STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally came before me A. C. Davis, who, being duly sworn, makes oath that the Spartanburg & Asheville Railroad Company is justly indebted to him in the sum of fourteen dollars as above stated, no part of which has been paid by discount or otherwise.

A. C. DAVIS.

Sworn to before me, 27 Sept., 1879.

[SEAL.] CHAS. P. WOFFORD, *Not. Pub.*

647 Statement of account of P. J. Davis with the S. & A. R. Road Co. for cross-ties furnished and engine wood.

To engineer's return, July, 1877, for 172 cross-ties furnished, at 25 cents	$43 00
9⅛ cords engine wood, at 1.00	9 10
	$52 10

By cash paid as per vouchers, $———.

The above is a correct statement of account of P. J. Davis with S. & A. R. R. C.

WM. K. BLAKE,
Sec'y & Treas'r.

STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally come before me, P. J. Davis, who, being duly sworn, makes oath that the foregoing account of fifty-two dollars & ten c'ts is just & true; that the Spartanburg & Asheville Railroad Company is justly indebted to him for said account, no part of which has been paid by discount or otherwise.

P. J. DAVIS,
By A. C. DAVIS.

Sworn to before me, 29th Sept., 1879.
[SEAL.] CHAS. P. WOFFORD, *Not. Pub.*

648 M. J. Fagg (under contract of E. Clayton & Co.) in account with the Spartanburg & Asheville Railroad Co.

By total final estimate for work done for the S. & A. R. R. Co., under contract of E. Clayton & Co.		$37,506 03
Am't to be paid in stock on the above estimate, 20 per cent		7,501 20
Am't of cash estimate		30,004 83
M. J. Fagg's proportional part of sub-contractor's profits.		797 95
Total cash due		$30,802 78
To am't paid by E. M. Clayton, agent of E. Clayton & Co., to M. J. Fagg on estimates	$6,728 19	
To am't p'd by E. M. C., ag't of E. C. & Co., to M. J. Fagg on sub-contractor's profits	264 62	
To am't p'd by W. K. B. to M. J. Fagg from Aug., 1875, to Aug. 1876	12,878 38	
To am't p'd by W. K. B. to M. J. Fagg from Aug., '76, to Aug., '77	9,395 35	
To am't p'd by W. K. B. to M. J. Fagg from Aug., 77, to Aug., 1878	279 60	
To am't p'd by W. K. B to M. J. Fagg since August, 1878	26 99	
Total balance due in cash	1,229 65	
		30,802 78

	By stock on M. J. Fagg's estimate	$7,501 20	
	" " " sub-contr's estimate	2,279 41	
	Total stock	9,780 61	
649	To stock p'd R. C. McCalla	166 66	
	To bal. stock due	9,613 95	
			9,780 61

I certify that the foregoing is a correct statement of the account of M. J. Fagg (under the contract of E. Clayton & Co.) with the S. & A. R. Road Co., for work done on the S. C. division for said company. E. & O. E.

WM. K. BLAKE,
Sec'y & Treas'r.

650 *Spartanburg & Asheville Railroad.*

Estimate of work done in the month of November, 1877, on Sec. No. --, Pacolet division, ——— residence, by P. S. Whisnant, contractor.

No. cubic yds.		
100	excavation earth, at 18c.	18 00
"	hard material	
"	loose rock	
10	" solid rock, at 96c.	9 60
	Embankment earth	
	" rock	
	Culvert masonry	
	Arch "	
295	walls, at $3.25	958 75
	Backing	
	Paving	
	Clearing and grubbing	
1,350,	B. M., feet Guage plank, at $10 per M	13 50
1,000,	" coffer dam plank, at $10 per M	10 00
5,009	" timber for turn table, at $30 per M	150 25
5,460,	" switch ties, at $10 per M	54 60
40	Crossties, at 25c	10 00
	Work on coffer dam	50 00
	Total amount	1,274 72
	Deduct per cent. withheld	
	Cash value of est.	
	Deduct previous estimates	
	Amount due	

I certify that this estimate is correct.

T. G. WILLIAMSON,
Resident Engineer.

Approved:
T. COLEMAN, *Chief Engineer.*

651 Statement of account of P. S. Whisnant with Sect. R. Road Co. for work done on Pacolet division:

To final estimate of work to Sept. 1, 1877		$1,274 72
By cash p'd, as per vouchers to Aug., '77	$750 00	
Amt., bal. due to Aug., '77	524 72	
		$1,274 74

The foregoing is a correct statement of account of P. S. Whisnant with the S. & A. R. Road Co.

WM. K. BLAKE, *Sec'y & Treas.*

STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally came before me P. S. Whisnant, who, being duly sworn, makes oath that the Spartanburg & Asheville Railroad Company is justly indebted to him in the sum of five hundred & twenty-four $\frac{72}{100}$ dollars, as above stated, and that he has not received payment of the same by discounts or otherwise. Deponent hereunto annexes the approved estimate of the chief engineer for the work, as above stated.

[SEAL.] P. S. WHISNANT.

Sworn to before me, this 27th Sept., 1879.

BEN'J WOFFORD, *Not. Pub.*

652 TRYON, N. C., *Dec.* 17, '77.

M. W. K. BLAKE, SEC. & TREAS. S. & A. R. R.:

Please pay to P. S. Whisnant & Sons, eighteen hundred and twenty-six $\frac{13}{100}$ dollars on acct. of my estimates. They are hereby authorized to receipt for the same.

[Endorsed across the face:] Accepted for S. & A. R. Co., Wm. K. Blake, Sec. & treas.

JOHN GARRISON.

Statement of account of P. S. Whisnant & Sons with S. & A. R. Road Co. for work done under contract of John Garrison on Vaugh Creek trustle, as per order of John Garrison to said company in favor of P. S. Whisnant & Sons:

To amt. of order of John Garrison to and accepted by S. & A. R. Road Co., in favor of P. S. Whisnant & Sons., dated December 17th, 1877		$1,826 13
By amt. paid on above, as per vouchers, to Aug. 1, '77	$294 51	
Amt. paid on above, as per vouchers, to Aug., '78	1,052 76	
Amt., bal. due	478 86	
		1,826 13

The foregoing is a correct statement of account of P. S. Whisnant & Sons with S. & A. R. Road Co.

WM. K. BLAKE, *Sec't'y & Treas.*

653 STATE OF SOUTH CAROLINA, *County of Spartanburg:*

Personally came before me P. S. Whisnant, of the firm of Whisnant & Sons, who makes oath that the Spartanburg and Asheville Railroad Company is justly indebted to said P. S. Whisnant & Sons in the sum of four hundred and seventy-eight $\frac{86}{100}$ dollars, the balance of the order of John Garrison in their favor, accepted by said railroad company, & which said — is hereunto annexed; that no part of said balance has been paid, but is due to said Whisnant & Sons, as above set forth.

P. S. WHISNANT & SONS.

Sworn to before me, this 27th, Sept., 1879.
[SEAL.] BEN'J WOFFORD, *Not Pub.*

654 ASHEVILLE, N. C., *April 9th*, 1880.

S. & A. R. R. Co. in ac. with M. P. Penland and Son.

1877.			
Feb.	13.	12 s'ks fine flour per Tanner's order	30 00
Oct.	2.	10 " flour, 25.00; 1 bu. corn, 75	25 75
"	27.	Order p'd Lum	5 30
Nov.	5.	Goods for Lum, 1 s'k flour, 2.50; sugar, 25; soap, 15; 7th, butter, 40; 9th, coffee, 20; soda, 10; analine red, 10	3 70
"	16.	1 gal. molasses, 50; sugar, 12; pork, 30	92
"	22.	Leather, 40; 26th, soap, 10	50
"	27.	Pork, 70; butter, 27	97
"	28.	Sugar, 40; Dec. 1st, butter, 20	60
"		Oil, 10; veil, 60; gloves, 40; blacking, 10	1 20
Dec.	8.	Butter, 50; 1 pr. child's shoes, 1.10	1 60
"	12.	4 y'ds calico	33
"	15.	Molasses, 40; pork, 55; butter, 25	1 20
		Rice, 12; meal, 25; flour, 50	87
		Sugar, 12; 22d, butter, 25; sugar, 15	52
		Eggs, 30; 26th, 1 s'k X sup. f. flour, 2.75	3 05
		Cigars, 50; sugar, 40	90
	26.	Shoe strings, 8; 29th, soap, 10	18
1878.			
Jan.	2.	2 y'ds jeans, 70; 1 sp. cotton, 10; 5th, bacon, 45	1 25
"	7.	Butter, 35; p'd Sol. Burton, 55	90
	9.	Ax, 90; 10th, per T. C. C.'s order, 2 bolts $\frac{4}{4}$ shirting, 44^2 & 45^2, 90 y'ds @ 7^3, 6.97	7 87
		14 s'ks fine flour, 28.00 for Lum; tobacco, 5; bacon, 57; rice, 11; 22d, 6 s'ps cotton for making s'ks, 40;	
655		1 load wood, 90; 23, per order 1 side harness leather, 9 lb., 3.15	33 18

1878.			
Jan.	23.	3 sides sole leather, 26² lb., 33c.	8 74
		Rope, 35; string L., 20; bacon, 64; tobacco, 10	1 29
		Butter, 20; coffee, 25; sugar, 12	57
	29.	Butter, 25; molasses, 20; 30th, p'd for unloading wagon, 25	25
			132 09
1878.			
Feb.	1.	1 pr. shoes, 1.90; 1 pr. socks, 30; 2nd, 1 pr. child's shoes, 80; 4th, 2 cakes soap, 20	3 20
"	11.	Butter, 20; bacon, 25; tobacco, 20	65
	13.	Pins, 10; sand paper, 5; tobacco, 10; meal, 25; bacon, 70	
	15.	1 box axle grease, 15; balance of s'k flour, 1.15	2 50
	23.	Bacon, 15; flour, 50; butter, 20; broom 25; sugar, 25; eggs, 25; tobacco 10	1 70
	25.	Oil, 10; 1 pr. shoes, 1.00; molasses, 20; flour, 50; 27th, 6 lb. bacon, 60; 28th, tobacco, 40	
M'ch	2.	Sugar, 50; rice, 12; eggs, 8	3 50
	4.	Soap, 10; starch, 20; blueing, 5; p'd T. C. Coleman's order to Tom Hiatt, 10.00	10 35
	6.	4 panes, 12x16, glass, 60; 7th, per order 10 s'ks X sup. f. flour, 2.65c.; 26.50; 5 s'ks family flour, 2.75c., 13.75; tobacco, 20; 1 set plates, 55; sp-ller, 15; spool cotton, 25; p'd Duncan, 1.60	
	9.	Butter, 15; sugar, 12; flour, 25; snuff, 5; eggs, 8; rice, 10; p'd Ledford, 75; oil, 5; soap, 10	45 25
656	11.	Bacon, 45; 15th, ½ bu. meal, 25; 1 box axle grease 15, tobacco 35	
	16.	Ginger, 5; tea, 15; molasses, 40; oil, 5; blacking, 10; 18th, p'd Isoam, 50; soap, 10	2 55
	23.	Butter, 15; sugar, 12; rice, 12	39
	25.	6 y'ds calico, 42; s'p cotton, 10; 6 y'ds domestic, 75; 5 y'ds cottons, 50	1 77
	27.	Bacon, 38; buttons, 15; 30th, bacon, 50; domestic, 12; eggs, 10; Ap'l 1st, soap, 10; blueing, 5; starch, 20; rice, 10	1 90
Apr'l	3.	Bacon, 37; 8th, soap, 10; oil, 5; shoestrings, 5	57
			206 32

1878.					
Apr'l	11.	Tobacco, 10; 1 ham 1.20 c.; flour, 30	1 60		
	13.	Fruit, 15; butter, 10; eggs, 10	35		
	15.	Soap, 10; spool cotton, 10; 17th, starch, 20	40		
		Butter, 20; tobacco, 10; p'd Geo. Johnston, 1.60	1 90		
	20.	Flour, 50; pepper, 5; sugar, 11	66		
		Spice, 5; molasses, 10	15		
	22.	Bacon, 35; soap, 10	45		
	24.	Candy, 20; 27th, candy, 10; chickens, 45	75		
	29.	Soap, 10; May 3d, eggs, 8; sugar, 13; tobacco, 5	36		
		Candles, 10; 4th, molasses, 30; sugar, 12	52		
		Rice, 10; butter, 20; lard, 13; 6th, soap, 10	53		
		Bal. on load wood, 10; 1 ham, 1.19	1 29		
		12 s'ks common flour	24 00		
		10 " sup. fine flour	22 50		
		4 " family "	9 60		
				271	38
657		*Cr's.*			
1877.					
M'ch	1.	Cash	30 00		
Nov.	28	& Jan. 2d, 1878, coupons of bonds, 80 & 81	30 00		
1878.					
Feb.	25.	Cash p'd by Lum for bal. on flour	1 15		
Aug.	1.	" " R. L. Coleman for bill of flour, May 27th	56 10		
"	26.	Cash 14.40; 1 bond in full for Lum's ac., 46.17	60 57		
Sept.	4.	Due account rendered	93 56	271	38
		Bal. due us	$93 56		

SPARTANBURG, So. CA.

The above balance of account of Messrs. M. P. Penland & Son *versus* Spartanburg & Asheville Railroad Company, amounting to ninety-three & $\frac{56}{100}$ dollars, has not been paid.

D. R. DUNCAN, *Pr's.*
WM. K. BLAKE, *Sec'ty.*

NORTH CAROLINA, *Buncombe County:*

W. H. Penland, being duly sworn, deposes and says: That the within account is just and true, and that the same and no part of the same, as alleged in the balance, has ever been paid to his knowledge, information, or belief, this April 28th, 1880.

W. H. PENLAND.

Subscribed & sworn to before me, this April the 28th, 1880.
[SEAL.] E. W. HERNDON,
Probate Judge & Clerk Superior Court.

658 The Spartanburg and Asheville R. R. Co. to The Spartanburg, Union & Columbia R. R. Co., Dr.:

For engines and car services during month of November, 1878, as follows:

1 engine on mail train,	26	days, @	$7.00		182 00
1 " " ditching "	26	"	"	"	182 00
1 coach,	26	"	"	4.10	106 60
1 "	8	"	"	"	32 80
2 freight cars, 26 days, en.	52	"	"	2.00	104 00
" " moving freight, 2,794 miles, @				1½	41 91
					$649 31

Statement of the Operations of The Spartanburg and Asheville R. R. for month of November, 1878.

Expenses—bills paid.

Paid A. G. Blackmel	for potatoes for convicts	1 42
" A. G. Floyd	" shoes " "	60 40
" D. Pall	" beef " "	7 35
" J. T. N. White	" bacon & meal "	62 29
" W. C. Cannon	" nails for depot at Coleman's	12 08
" J. R. Heatherly	" boards " " "	14 40
" Wm. Harris	" building " " "	50 00
" "	" work on section house	2 50
" Ed. Stansill	" nails, &c., for " "	1 40
Paid John Metcalf	for cleaning out cut	50
659 " Dan'l Pall	for engine wood	10 35
" W. C. Gurley	" " "	17 50
Paid R. F. Landrum	" " "	1 60
" L. R. McAboy	" " "	92 50
" engineers and firemen		176 90
" section-masters, hands, and guards		300 95
" conductor and train hands		94 40
" depot agents		71 60
		$978 14

Unpaid expenses, S., U. & C. R. R. Co. ac.:

For engine and car service		649 31
		$1,627 45
Earnings from freights	721 69	
" " passengers	337 95	
		$1,059 64
		$567 81

Due S., U. & C. R. R. Co., money borrowed to pay for building section houses, water tank, &c. $380 18

660 FINAL.

Spartanburg & Asheville Railroad.

Estimate of work done to the month of October, 1877, on Sec. No. 26, 27, 28, 29, & 30, —— division, —— residence, by ——. Contractor, E. Clayton:

No. cubic y'ds.			
115,620	excavation earth, at 18		$20,811 60
7,560	" hardmaterial, at 40		3,024 00
19,507	" loose rock, at 50		9,753 50
4,613	" solid rock, at 96		4,428 48
55,709	embankment earth, at 19		10,584 71
	" rock		
763	culvert masonry, at 3.25		2,479 75
	arch masonry		
	walls		
	backing		
308	paving, at $1.50		462 00
16,649	clearing and grubbing, lineal ft.=3.15 per mile, $2.50		787 50
	B. M. feet trestle		
Total amount of haul			4,264 94
Total amount			$56,596 48
Deduct per cent. withheld			
Cash value of est.			
Deduct previous estimates			
Amount due			

661 I certify that this estimate is correct.

——— ———,
Resident Engineer.

Approved:
T. COLEMAN,
Chief Engineer.

I certify that the above is a true copy of the original estimates.
WM. K. BLAKE,
Sec'y & Tr. S. & A. R. R. Co.

662 *Spartanburg & Asheville Railroad.*

Estimate for work done in the month of July, 1877, on Sec. —, No. —, Pacolet Division, ——— residence, by ———. Contractor E. Clayton.

No. cubic yds.			
109,412	excavation earth, at 18	$19,694	16
5,481	" hard material, at 40	2,192	40
17,829	" loose rock, at 50	8,914	50
4,297	" solid rock, at 96	4,125	12
46,551	embankment earth burrowed, at 19	8,844	69
	" rock, at		
763	culvert masonry, at $3.25	2,479	75
	arch, at		
	walls, at		
	backing, at		
308	paving, at $1.50	435	00
17,977 ft.	clearing and grubbing or 3.4 miles, per mile $250	850	00
	B. M. feet trestle, at		
	extra haul in div. est., 1876	3,664	27
	Total amount	$51,199	89
	Deduct — per cent. withheld		
	Cash value of est.	$51,199	89
	Deduct previous estimates	49,138	31
	Amount due	$2,061	68

I certify that this estimate is correct.

T. G. WILLIAMSON,
Resident Engineer.

663 Approved:

——— ———,
Chief Engineer.

I certify that the above is a true copy of the original estimate.

WM. K. BLAKE,
Sect. & Tr. S. & A. R. R. Co.

664 *Spartanburg & Asheville Railroad.*

Estimate of work done in the month of June, 1877, on sec. No. —, Pacolet Division, ——— residence, by Contractor E. Clayton.

No. cubic yds.			
105,144	excavation, earth, at 18	$18,925	92
5,215	" hard material, at 40	2,086	00
16,664	" loose rock, at 50	8,332	00
4,173	" solid rock, at 96	4,006	08
43,851	embankment, earth burrowed, at 19	8,332	29
	" rock, at —		

No. cubic yds.		
763	culvert masonry, at $3.25	2,479 75
	arch, at —	
	walls, at —	
	backing, at —	
308	paving, at $1.50	462 00
17,979	cl-aring and grubbing, or 3.4 miles, per mile at $250	850 00
	B. M. feet trestle, at —	
	Extra haul in Dec'r, est. 1876	3,664 27
	Total amount	$49,138 31
	Deduct 10 per cent. withheld	
	Cash value of est.	$49,138 31
	Deduct previous estimates	47,164 22
	Amount due	$1,974 09

I certify that this estimate is correct.
[SEAL.] T. G. WILLIAMSON,
Resident Engineer.

665 Approved:
T. COLEMAN, *Chief Engineer.*

I certify that the above is a true copy of the original estimate.
WM. K. BLAKE,
Sec'y & Tr. S. & A. R. R. Co.

666 *Spartanburg & Asheville Railroad.*

Estimate of work done in the month of May, 1877, on sec. No. —, Pacolet Division, ——— residence, by Contractor E. Clayton.

No. cubic yds.		
99,876	excavation, earth, @ 18	$17,977 68
5,215	" hard material, @ 40	2,086 00
15,739	" loose rock, @ 50	7,869 50
3,898	" solid rock, @ 96	3,742 08
42,951	embankment, earth burrowed, @ 19	8,160 69
	" rock	
732	culvert masonry, @ $3.25	2,379 00
	arch "	
	walls "	
	backing	
290	paving, @ $1.50	435 00
17,979	ft. clearing and grubbing, or 3.4 miles, per mile $250	850 00
	Extra haul in est. for Dec. 1876	3,664 27
	Total amount	47,164 22

Deduct 10 per cent. withheld	$45,716 42
Cash value of est.	42,447 80
Deduct previous estimates	39,993 21
Amount due	$2,454 69

I certify that this estimate is correct.
[SEAL.] T. G. WILLIAMSON,
Resident Engineer.

667 Approved:
T. COLEMAN, *Chief Engineer.*

I certify that the above is a true copy of the original estimate.
WM. K. BLAKE,
Sec'y & Tr. S. & A. R. R. Co.

668 *Spartanburg & Asheville Railroad.*

Estimate of work done in the month of April, 1877, on sec. No. —, Pacolet Division, ——— residence, by Contractor E. Clayton.

No. cubic yds.			
96,077	excavation, earth, at 18		$17,293 86
5,215	" hard material, at 40		2,086 00
13,589	" loose rock, at 50		6,794 50
3,548	" solid rock, at 96		3,406 08
42,601	embankment, earth burrowed, at 19		8,094 19
	" rock		
562	culvert masonry, at 3.25		1,826 50
	arch "		
	walls		
	backing		
281	paving, at $1.50		421 50
17,979	ft. clearing & grubbing, or 3.4 miles, per mile $250		850 00
	B. M. feet trestle		
	Extra haul in est. for Dec., 1876		3,664 27
	Total amount		44,436 90
	Deduct — per cent. withheld		4,443 69
	Cash value of est.		39,993 21
	Deduct previous estimates		37,530 59
	Amount due		$2,462 62

I certify that this estimate is correct.
[SEAL.] T. G. WILLIAMSON,
Resident Engineer.

669 Approved:
T. COLEMAN, *Chief Engineer.*

I certify that the above is a true copy of the original estimates.
WM. K. BLAKE,
Sec'y & Tr. S. & A. R. R. Co.

670 *Spartanburg & Asheville Railroad.*

Estimate of work done in the month of March, 1877, on sec. No. —, Pacolet Division, ——— residence, by Contractor E. Clayton.

No. cubic yds.			
91,727	excavation, earth, at 18		16,510 86
5,215	" hard material, at 40		2,086 00
11,139	" loose rocks, at 50		5,569 50
2,998	" solid rock, at 96		2,878 08
42,601	embankment, earth burrowed, at 19		8,094 19
	" rock		
511	culvert masonry, at $3.25		1,660 75
	arch "		
	walls		
	backing		
258	paving, at $1.50		387 00
17,979	ft. clearing and grubbing, 3.4 miles, per mile $250		850 00
	B. M. feet trestle		
	Extra haul in est. for Dec'r, 1876		3,664 27
	Total amount		41,700 65
	Deduct 10 per cent. withheld		4,170 06
	Cash value of est.		37,530 59
	Deduct previous estimates		36,130 55
	Amount due		$1,400 04

I certify that this estimate is correct.

T. G. WILLIAMSON,
Resident Engineer.

671 Approved:
T. COLEMAN, *Chief Engineer.*

I certify that the above is a true copy of the original estimates.

WM. K. BLAKE,
Sec'y & Tr. S. & A. R. R. Co.

672 *Spartanburg & Asheville Railroad.*

Estimate of work done in the month of February, 1877, on sec. No. ——, Pacolet Division, —— residence, by Contractor E. Clayton.

No. cubic yds.			
87,722	excavation earth, at 18		$15,789 96
5,215	" hard material, at 40		2,086 00
9,500	" loose rock, at 50		4,750 00
2,998	" solid rock, at 96		2,878 08
42,521	embankment, earth burrowed, at 19		8,078 99
	" rock		

No.	cubic yds.		
511		culvert masonry, at $3.25	1,660 75
		arch "	
		walls	
		backing	
258		paving, at $1.50	387 00
17,979		ft. clearing and grubbing, or 3.4 miles, per mile $250	850 00
		B. M. feet trestle	
		Extra haul sec., Dec'r es., 1876	3,664 27
		Total amount	40,145 05
		Deduct 10 per cent. withheld	4,014 50
		Cash value of est.	36,130 55
		Deduct previous estimates	34,191 78
		Amount due	1,938 77

I certify that this estimate is correct.
[SEAL.] T. G. WILLIAMSON,
Resident Engineer.

673 Approved:
T. COLEMAN, *Chief Engineer.*

I certify that the above is a true copy of the original estimate.
WM. K. BLAKE,
Sec'y & Tr. S. & A. R. R. Co.

674 *Spartanburg & Asheville Railroad.*

Estimates of work done in the month of January, 1877, on sec. No. —, Pascolet Division, —— residence, by Contractor E Clayton.

No.	cubic yds.		
80,251		excavation, earth, at 18	$14,445 18
5,140	"	hard material, at 40	2,056 00
8,915	"	loose rock, at 50	4,457 50
2,758	"	solid rock, at 96	2,647 68
41,921		embankment, earth burrowed, at 19	7,964 99
		" rock	
515		culvert masonry, at 3.25	1,660 75
		arch "	
		walls	
		backing	
258		paving, at $1.50	387 00
14,979		ft. clearing and grubbing, or 2.83 miles, per mile, $250	707 50
		B. M. feet trestle	

Extra Haul.

15,915	of earth on section 26, by Growling, at 5.1	$811 66
36,610	" " " " 27, at 3.5	1,281 35
1,974	" loose rock " " at 3.5	69 09
298	" solid " " " at 10.5	31 29
43,969	" earth section 28, at 2.9	1,275 10
2,971	" loose rock, section 28, at 2.9	86 16
1,260	" solid " " " at 8.7	109 62
	Total amount	37,990 87
	Deduct 10 per cent. withheld	3,799 09
675	Cash value of est.	34,191 78
	Deduct previous estimates	33,385 70
	Amount due	806 08

I certify that this estimate is correct.
[SEAL.] T. G. WILLIAMSON,
Resident Engineer.

Approved:
T. COLEMAN, *Chief Engineer.*

I certify that the above is a true copy of the original estimate.
WM. K. BLAKE,
Se'cy & Tr. S. A. R. R. Co.

676 *Spartanburg & Asheville Railroad.*

Estimate of work done in the month of December, 1876, on sec. No. —, Pacolet Division, —— residence, by Contractor E. Clayton.

No. cubic yds.		
77,976	excavation, earth, at 18	$14,035 68
5,040	" hard material, at 40	2,016 00
8,740	" loose rock, at 50	4,370 00
2,613	" solid rock, at 96	2,508 48
40,766	embankment, earth burrowed, at 19 c.	7,745 54
	" rock	
511	culvert masonry, at $3.25	1,660 75
	arch "	
	walls	
	backing	
258	paving, at $1.50	387 00
14,979	ft. clearing and grubbing, at $2.50	707 50
	B. M. feet trestle	

Extra Haul.

15,915	of earth hauled on section 26 by Grambling, at 5.1 c.	$811 66
36,610	of earth hauled on section 27 by Grambling, at 3.5 c.	1,281 35
1,974	of loose rock hauled on section 27 by Grambling, at 3.5 c.	69 09
298	of solid rock hauled on section 27 by Grambling, at 10.5 c.	31 29
43,969	of earth hauled on section 28 by Grambling, at 2.9 c.	1,275 10
2,971	of loose rock hauled on section 28 by Grambling, at 2.9 c.	86 16
1,260,	of solid rock hauled on section 28 by Grambling, at 8.7 c.	109 62
	Total amount	37,095 22
	Deduct 10 per cent. withheld	3,709 52
	Cash value of est.	33,385 70
677	Deduct previous estimates	28,484 15
	Amount due	4,901 55

I certify that this estimate is correct.

[SEAL.] T. G. WILLIAMSON,
Resident Engineer.

Approved:
T. COLEMAN, *Chief Engineer.*

I hereby certify that the above is a true copy of the original estimate.

WM. K. BLAKE,
Sec'y & T. S. & A. R. R. Co.

678 *Spartanburg & Asheville Railroad.*

Estimate of work done in the month of October and November, 1876, on sec. No. —, Pacolet Division, —— residence, by Contractor E. Clayton.

No. cubic y'ds.		
74,136	excavation, earth, at 18	$13,344 48
5,040	" hard material, at 40	2,016 00
8,340	" loose rock, at 50	4,170 00
2,463	" solid rock, at 96	2,364 48
38,836	embankment, earth, burrowed, at 19	6,998 84
	" rock	
511	culvert masonry, at $3.25	1,660 75
	Arch "	
	Walls	
	Backing	
258	boring, at $1.50	387 00

No. cubic y'ds.		
14,979 ft. clearing and grubbing, 2.83 miles, per mile, $2.50		$707 50
B. M. feet trestle		
Total amount		31,649 05
Deduct 10 per cent. withheld		3,164 90
Cash value of est.		28,484 15
Deduct previous estimates		24,660 12
Amount due		$3,824 03

I certify that the above estimate is correct.

T. G. WILLIAMSON,
Resident Engineer.

679 Approved: T. COLEMAN, *Chief Engineer.*

I certify that the above is a true copy of the original estimate.

WM. K. BLAKE,
Sec'ty & Treas'r S. & A. R. R. Co.

680 *Spartanburg & Asheville Railroad.*

Estimate of work done in the month of September, 1876, on sec. No. —, Pacolet Division, ——— residence, ——— by Contractor E. Clayton.

No. cubic yds.		
Excavation, ecarth, at 18		$12,186 90
" hard material, at 40		1,673 60
" loose rock, at 50		3,165 00
" solid rock, at 95		1,900 00
Embankment eart-, burrowed, at 19		5,947 38
" rock		
Culvert masonry, at $3.25		1,485 25
Arch "		
Walls		
Backing		
Paving, at $1.50		334 50
Clearing and grubbing 2.83 miles, per mile, $2.50		707 50
B. M. feet trestle		
Total amount		27,400 00
Deduct 10 per cent. withheld		2,740 01
Cash value of each		24,660 12
Deduct previous estimates		22,657 53
Amount due		$2,002 59

I certify that this estimate is correct.
[SEAL.] T. G. WILLIAMSON,
Resident Engineer.

681 Approved: T. COLEMAN, *Chief Engineer.*

I certify that the above is a true copy of the original estimate.
WM. K. BLAKE,
Sec'y & Treas. S. & A. R. R. Co.

682 *Spartanburg & Asheville Railroad.*

Estimate of work done in the month of August, 1876, on Sec. No. —, Pacolet Division. ——— residence, by ———. Contractor E. Clayton.

No. cubic yds.		
64,857	excavation, earth, at 18½	$11,674 44
3,317	" hard material, at 40	1,326 80
5,684	" loose rock, at 50	2,842 00
2,073	" solid rock, at 95	1,969 35
27,351	embankment, earth, borrowed, at 19	5,196 69
	" rock	
373	culvert masonry, at 3.25	1,212 25
	Arch "	
	Walls	
	Backing	
164	paving, at $1.50	246 00
14,979 ft.	clearing and grubbing 2.83 miles, per mile, $250	707 50
	B. M. feet trestle	
	Total amount	25,175 03
	Deduct 10 per cent. withheld	2,517 50
	Cash value of est	22,657 53
	Deduct previous estimates	19,670 45
	Amount due	2,987 08

I certify that this estimate is correct.
T. G. WILLIAMSON,
Resident Engineer.

683 Approved: T. COLEMAN, *Chief Engineer.*

I certify that the above is a true copy of the original estimate.
WM. K. BLAKE,
Sec'y & Treas. S. & A. R. R. Co.

684 *Spartanburg & Asheville Railroad.*

Estimate of work done in the month of July, 1876, on sec. No. ——, Pacolet division, —— residence, by ——. Contractor, E. Clayton.

No. cubic yds.			
56,197	excavation earth, at 18		$10,115 46
2,356	" hard material, at 40		942 40
5,090	" loose rock, at 50		2,545 00
1,388	" solid rock, at 95		1,318 60
27,190	embankment, earth, burrowed		5,166 10
	rocks		
272	culvert masonry, at $325		884 00
	arch "		
	walls		
	backing		
118	paving, at $1.50		177 00
14,975	ft. clearing and grubbing 2.83 miles, per mile, at $250		767 50
	B. M. feet trestle		
	Total amount		21,856 06
	Deduct 10 per cent. withheld		2,185 61
	Cash value of est.		19,670 45
	Deduct previous estimates		17,854 25
	Amount due		$1,816 20

I certify that this estimate is correct.

[SEAL.] T. G. WILLIAMSON,
Resident Engineer.

Approved: T. COLEMAN, *Chief Engineer.*

685 I certify that the above is a true copy of the original estimate.

WM. K. BLAKE,
Sect'y & Tr'a'r S. & A. R. R. Co.

686 *Spartanburg & Asheville Railroad.*

Estimate of work done in the month of June, 1876, on sec. No. ——, Residence ——, by Contractor E. Clayton.

No. cubic yds.		
50,290	excavation, earth, at 18	$9,052 20
1,603	" hard material, at 40	641 20
4,370	" loose rock, at 50	2,185 00
1,139	" solid rock, at 95	1,082 05
26,890	embankment, earth or burrowed, at 19	5,109 10
	" rock	
272	culvert masonry, at $3.25	884 00
	arch	
	walls	
	backing	

No. cubic yds.		
118	paving, at $1.50	$177 00
14,975	ft., clearing and grubbing 2.83 miles, at $250	707 50
	B. M. feet trestle	
	Total amount	19,838 05
	Deduct 10 per cent. withheld	1,983 80
	Cash value of est.	17,854 25
	Deduct previous estimates	16,101 54
	Amount due	$1,752 71

I certify that this estimate is correct.
[SEAL.] T. G. WILLIAMSON,
Resident Engineer.

687 Approved: T. COLEMAN, *Chief Engineer.*

I certify that the above is a true copy of the original estimate.
WM. K. BLAKE,
Sec'y Trea'r S. & A. R. R. Co.

688 & 89 *Spartanburg and Asheville Railroad.*

Estimate of work done in the month of May, 1876, in Sec. No. —, Pacolet division. Residence ———, by Contractor E. Clayton.

No. cubic y'ds.		
43,593	excavation, earth, at 18c.	$7,848 24
1,233	" hard material, at 40c.	493 20
3,945	" loose rock, at 50c.	1,972 50
1,134	" solid rock, at 95c.	1,077 30
24,944	embankment earth burrowed, at 19c.	4,739 36
	" rock	
272	culvert masonry, at $3.25	884 00
	Arch "	
	Walls	
	Backing	
118	paving, at $150	167 00
14,625	clearing and grubbing on 2⅘ miles, per mile, $250	700 00
	B. M. feet trestle	
	Total amount	17,890 60
	Deduct 10 per cent withheld	1,789 06
	Cash value of est.	16,101 54
	Deduct previous estimates	14,394 27
	Amount due	$1,707 27

I certify that this estimate is correct.
[SEAL.] T. G. WILLIAMSON,
Resident Engineer.

690 Approved:
T. COLEMAN, *Chief Engineer.*

I certify that the above is a true copy of the original estimate.
WM. K. BLAKE,
Sec'y & Treas'r S. & A. R. R. Co.

691 *Spartanburg & Asheville Railroad.*

Estimate of work done in the month of April, 1876. Sec. No. —. Pacolet division. Residence ———, by Contractor E. Clayton.

No. of cubic yds.			
36,058	excavation, earth, at 18c	$6,490	44
741	" hard material, at 40c.	296	40
3,875	" loose rock, at 50c	1,937	50
1,134	" solid rock, at 95c.	1,077	30
23,321	embankment earth, burrowed, at 19c.	4,430	99
	" rock		
272	culvert masonry, at $3.25	884	00
	Arch "		
	Walls		
	Backing		
118	paving, at $1.50	177	00
14,625	ft. clearing and grubbing, or 2⅘ miles, per mile, at $250	700	00
	B. M. feet trestle		
	Total amount	15,993	63
	Deduct 10 per cent. withheld	1,599	36
	Cash value of est.	14,394	27
	Deduct previous estimates	12,364	29
	Amount due	2,029	98

I certify that this estimate is correct.
T. G. WILLIAMSON,
Resident Engineer.

692 Approved:
T. COLEMAN, *Chief Engineer.*

I certify that the above is a true copy of the original estimate.
WM. K. BLAKE,
Sec'y & Treas. S. & A. R. R. Co.

693 *Spartanburg & Asheville Railroad.*

Estimate of work done in the month of March, 1876, on Sec. No. —, Pacelet division, residence, by ———, contractor, E. Clayton.

No. cubic yds.			
30,566	excavation earth, at 18c.	$5,501	88
156	" hard material, at 40	63	20
3,796	" loose rock, at 50	1,898	00
834	" solid rock, at 95	792	30
19,588	embankment, earth borrowed, at 19	3,721	72
	" rock		

No. cubic yds.		
272	culvert masonry, at $3.25	$884 00
	Arch "	
	Walls	
	Backing	
118	paving, at $1.50	177 00
	Clearing and grubbing	
14,625	B. M. ft. test trestle or $2\frac{4}{5}$ miles per mile, at $250	700 00
	Total amount	13,738 10
	Deduct ten per cent. withheld	1,373 81
	Cash value of est.	12,364 29
	Deduct previous estimates	11,013 83
	Amount due	$1,350 46

I certify that this estimate is correct.
[SEAL.] T. G. WILLIAMSON,
Resident Engineer.

694 Approved:
T. COLEMAN, *Chief Engineer.*

I certify that the above is a true copy of the original estimate.
WM. K. BLAKE,
Sec'y & Treas. S. & A. R. R. Co.

695 *Spartanburg & Asheville Railroad.*

Estimate of work done in the month of February, 1876, on Sec. No. —, Pacolet disvision, ——— residence, by ———, contractor, E. Clayton.

No. cubic yds.		
26,291	excavation earth, at 18c.	4,732 88
158	" hard material, at 40	63 20
3,389	" loose rock, at 50	1,694 50
749	" solid rock, at 95	711 55
17,234	embankment, earth borrowed, at 19	3,274 46
	" rock, at $2.25	884 00
272	culvert masonry	
	Arch "	
	Walls	
	Backing	
118	paving, at $1.50	177 00
14,625	ft. clearing and grubbing or $2\frac{8}{10}$ miles, at $2.50	700 00
	B. M. feet trestle	
	Total amount	12,237 59

Deduct 10 per cent. withheld	$1,223 76
Cash value of est.	11,013 83
Deduct previous estimates	7,854 45
Amount due	$3,159 38

I certify that this estimate is correct.
[SEAL.] T. G. WILLIAMSON,
Resident Engineer.

696 Approved.
T. COLEMAN, *Chief Engineer.*

I certify that the above is a true copy of the original estimate.
WM. K. BLAKE,
Sect'y & Treas'r S. & A. R. R. Co.

697 *Spartanburg & Asheville Railroad.*

Estimate of work done from Aug. 18, 1875, to January 20, 1876, on Sec. No. —, Pacolet division, —— residence, by contractor E. Clayton.

No. cubic yds.		
18,911	excavation, earth on average haul of 300 ft. at 18	$3,403 98
120	excavation hard material, at 40	48 00
1,804	" loose rock, at 50	902 00
661	" solid rock, at 95	627 95
13,696	embankment, earth borrowed, at 19	2,602 24
	" rock, at $3.25	507 00
156	culvert masonry	
	arch "	
	walls	
	backing	
74	paving, at $1.50	111 00
11,150 ft.	clearing and grubbing, or $2\frac{1}{10}$ miles, at $250	525 00
	B. M. feet trestle	
	Total amount	8,727 17
	Deduct 10 per cent. withheld	872 62
	Cash value of est	7,854 45
	Deduct previous estimates	
	Amount due	$7,854 45

I certify that this estimate is correct.
[SEAL.] T. G. WILLIAMSON,
Resident Engineer.

698 Approved. T. COLEMAN, *Chief Engineer.*

I certify that the above is a correct copy of the original estimate.
WM. K. BLAKE,
Sec. & Treas. S. & A. R. R. Co.

699 And at another term of our said court begun, opened, and held in the city of Charleston, in and for the western district of North Carolina, on the second Monday in December, 1879, it being the 8th day of said month of December, the Hon. Hugh. L. Bond, United States circuit judge, being present, presiding, and holding said court.

When on the 20th day of said month of December, the defendants, the commissioners of Buncombe county, files in said court their exceptions to the report of the special master, which said exceptions are in words and figures following,to wit:

700 *Exceptions to the Report of the Special Master.*

Circuit court of the United States for the Western District of North Carolina.

V. R. Tommey and The Atlanta Rolling Mill Co.
vs.
The Spartanburg and Asheville Railroad Company and others.

The defendant, The Board of Commissioners of Bumcombe county, excepts to the report made herein by A. Burwell, Esq., special master under an order of this court, entered in this cause on the — day of ———, 187–.

First exception. For that the special master has not found by his said report that the Spartanburg and Asheville Railroad Company has not been made party to this suit by the service of process or by voluntary appearance.

Second exception. For that the special master has not found by his said report that at the time this suit was commenced the
701. plaintiffs, or either of them, had not [the] right to sue said defendant corporation for the foreclosure of said mortgage, although the evidence of V. R. Tommey and the several claims offered in evidence by plaintiffs show they had not such right.

Third exception. For that the special master has not found by his said report that no request was made to the trustees named in said mortgage by the plaintiffs, or either of them, to take possession of the mortgaged property, and sell the same, or to commence suit to foreclose said mortgage, although the evidence of the plaintiff, V. R. Tommey, and the bill of complaint show that no such request was made.

Fourth exception. For that the special master has not found by his said report that the said mortgage bonds were not due when this suit was commenced, and that the provision in said mortgage whereby the entire amount of principal and interest of all of said bonds is made to become due upon a failure of the defendant company for six months to pay any simi-annual instalment of interest on
702 said bonds, or any one of them, was an unusual provision in mortgages in North Carolina, and was not authorized by the resolutions of the stockholders and board of directors of the defend

ant corporation, or if authorized, conferred no right upon the plaintiffs, or either of them, to bring this suit, but only upon the trustees named in said mortgage.

Fifth exception. For that the special master has not found by his said report that the plaintiff, V. R. Tommey, is not the owner of the five bonds claimed by him, as from the testimony of V. R. Tommey himself, he should have found.

Sixth exception. For that the special master has not found that D. R. Duncan, president of the defendant corporation, had not authority and power to hypothecate said mortgage bonds to the holders thereof, although the testimony of said Duncan shows he had not such authority and power, and there is no evidence that the acts of said Duncan in hypothecating said bonds were acknowledged or ratified by the defendant corporation.

703 Seventh exception. For that the special master has not found by his said report that the loans of money made to said D. R. Duncan by the various persons holding said mortgage bonds as collateral were made at usurious rates of interest, although the testimony of D. R. Duncan himself shows that he had no authority to borrow money for the S. & A. R. R. Co. at such rates of interest, and that such rates were usurious in the State of South Carolina, where such loans were made.

Eighth exception. For that the special master has found by his said report that the alleged mortgage was duly executed on the 1st day of October, 1876, and was duly proved and registered in Spartanburg county, South Carolina, on the 20th day of June, 1877, although the mortgage itself and the testimony of D. R. Duncan and G. Cannon show that it was not duly executed on said 1st day of Oct., 1876, nor on any other day, and was not duly proved and registered in said county of Spartanburg, S. C., on said 20th day of June, 1877, nor at any other time.

704 Ninth exception. For that the special master should have found by his said report that W. H. Inman never acquired right or title to the bonds of the counties of Spartanburg and Union by reason of his transactions with D. R. Duncan in respect of said bonds, and that said Inman is accountable to said defendant corporation for the par value of said bonds, or at least for their present market value; and said special master should have found from the testimony before him that said Inman acquired no right or title to the said mortgage bonds claimed by him, and is accountable to the defendant corporation for the said bonds or their value.

Tenth exception. For that the special master finds that all the parties upon the detailed list of the debts of the S. & A. R. R. Co. filed by said master have a valid claim to the mortgage held by them, when he should have found that neither the plaintiff, nor W. H. Inman, nor the S., U. & C. R. R. Co., nor any of the officers of the S. & A. R. R. Co., who hold any of said bonds, have a valid claim

705 to the same, but are accountable to the said S. & A. R. R. Co. for said bonds.

Eleventh exception. For that the special master finds by his said report that on the 1st day of January, 1878, the S. & A.

R. R. Co. was notoriously insolvent, and could not pay the interest coupons falling due upon the mortgage bonds at that time, when he should have found from the testimony of D. R. Duncan that no demand was made for the payment of said coupons, and that the property and assets of the defendant corporation were worth largely more than the debts against said corporation at said date; and should have found from the testimony of V. R. Tommey that the plaintiffs at said date did not know of the insolvency of said corporation, if said corporation were insolvent, and did not present the coupons held by them for payment, because at said date the defendant corporation was not due plaintiffs anything.

Twelfth exception. For that the special master has found by his said report that a sale of the property of the defendant corporation is necessary, when he should have found that the plaintiffs
706 have no right to a sale of said property, and their bill ought to be dismissed.

Thirteenth exception. For that the said special master should have found and reported that by the charter and by-laws of defendant company only the board of directors of said company had and have authority to transact the business and control the affairs of said company and make contracts binding upon said company, and that contracts made with D. R. Duncan by the holders of the alleged mortgage bonds are not valid or binding on said company, and confer upon said holders no rights under said mortgage.

J. H. MERRIMON,
Sol. for B'd Com'rs.

707 And at the said December term, 1879, and on said 20th day of December, 1879, the defendants, M. J. Fagg, Geo. C. Perrin; R. W. Allen, A. Cannon, & J. P. Johnston, partners under the name & style of Allen, Cannon & Co.; Ephraim Clayton; J. E. Fry & J. A. Deal, partners under the name & style of Fry and Deal; Thad-eus Coleman, S. M. Rice, & R. L. Coleman, partners under the name & style of Rice & Coleman; H. H. Gramlin, W. P. Fortune, T. G. Williamson, and John Garrison, file in said court their several exceptions to the report of the special master, which said exceptions are in words and figures following, to wit:

708 Circuit Court of the U. S., West. Dist. N. C. In Equity.

V. R. TOMMEY & THE ATLANTA ROLLING MILL COMPANY
v.
THE SPARTANBURG & ASHEVILLE R. R. Co. and others.

M. J. Fagg, a creditor, excepts to the report of the special master herein, for that said special master does not find that he is entitled to be paid his debt out of the proceeds of the sale of the property of said defendant company in preference to the debts of the holders of the mortgage bonds or the debts of the holders of the receiver's certificates.

J. H. MERRIMON,

709 In the Circuit Court of the United States for the Western District of North Carolina.

V. R. TOMMEY & ATLANTA ROLLING MILL COMPANY

v.

THE SPARTANBURG & ASHEVILLE RAILROAD COMPANY *et al.*

Geo. C. Perrin, one of the creditors who files his claim against the S. & A. R. R. Co. in this cause, and claims a lien upon the property of said company, excepts to the report of the special master herein—

I. For that the said special master does not find the amount of his debt against the said defendant company to be the amount ascertained by judgment against said company in the superior court of Henderson county, to wit, the sum of twelve hundred and fifty-eight $\frac{74}{100}$ dollars, but finds that his said debt amounts to only eleven hundred and ninety-one $\frac{24}{100}$ dollars.

II. For that said special master does not find that he is
710 entitled to have his said debt paid out of the proceeds of the sale of said property of said def't company, in preference to the holders of the 1st mortgage bonds of said company, or the debt created by the receiver, under the order of this court.

J. H. MERRIMON,
Sol. for Perrin.

711 Circuit Court U. S., West. Dist. N. C. In Equity.

V. R. TOMMEY *et al. vs.* THE S. & A. R. R. Co. *et al.*

The exceptions of R. W. Allen, A. Cannon, & J. P. Johnston, partners under the name & style of Allen, Cannon & Co., creditors, to the report of the special master herein.

1. For that the said special master does not find the amount of their debt against the defendant company to be the amount ascertained in the judgment of the superior court of Henderson county in favor of said creditors against the defendant company, namely, two thousand seven hundred & ten $\frac{83}{100}$ dollars, but finds that there is only due said creditors the sum of twenty four hundred and forty-five $\frac{63}{100}$ dollars.

2. For that said special master does not find that said creditors are entitled to be paid their debt out of the proceeds of the sale of the property of the defendant company in preference to the debts of the holders of the mortgage bonds of said company, or
712 the holders of the receiver's certificates.

J. H. MERRIMON,
Sol. for A., C. & Co.

713 In the Circuit Court of the United States for the Western District of North Carolina.

V. R. TOMMEY and THE ATLANTA ROLLING MILL COMPANY

vs.

THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY and others.

The defendant, Ephraim Clayton, excepts to the report of the special master:

1. For that the special master finds and reports that the defendant has not a first lien, nor any lien, upon the property, rights, and franchises of the defendant, The Spartanburg and Asheville Railroad Company, for his debt.

2. For that the special master does not allow and find for this defendant the following sum, proved by the witness, W. K. Blake, to be due him, namely, two hundred and two dollars, and that the same has a preference over the debts of the holders of the mortgage bonds of the company, being a claim prior in date to the

714 alleged execution of the mortgage.

3. For that the special master finds that D. R. Duncan, president of the S. & A. Railroad Company, was duly authorized to hypothecate the alleged 1st mortgage bonds of the said S. & A. R. R. Co., when he should have found that said Duncan had no such authority.

4. That the special master finds that the alleged mortgage was duly executed on the 1st day of Oct., 1876, while the evidence shows that the said alleged mortgage was not duly executed at any time, and was not executed in pursuance of the resolutions of the stockholders of the S. & A. R. R. Co. and the resolutions of the board of directors of said company, and that said alleged mortgage contained unusual provisions.

5. For that the master finds that said alleged mortgage was duly registered in Spartanburg Co., S. C., on June 20th, 1877, while the evidence shows that said alleged mortgage was never duly registered in said county.

6. For that the master finds that all the parties whose names

715 appear upon the detailed list of the debts of the S. & A. R. R. Co. filed by said master have a valid claim to the mortgage bonds held by them, while the evidence shows that W. H. Inman has not a valid claim to the bonds held by him; and the evidence also shows that none of the creditors holding the said alleged first mortgage bonds as collaterals have a valid claim to the same.

8. For that the special master does not find that the loans of money made by W. H. Inman [to] the S., U. & C. R. R. Co. were at usurious rates of interest, and that the said D. R. Duncan had no authority to borrow money at such rates of interest.

9. For that the master finds that this defendant has no right to recover that portion of his land over which the said S. & A. R. R. Co. has built its said road, while the evidence shows that said company has no right or title to said land, & has never taken any steps to acquire the same, but that this defendant has title to said land,

& defendant company is in adverse possession of same, and
716 that this defendant, prior to the bringing of this suit, had begun an action in the superior court of the county of Polk (in which county the said land is situate) against the S. & A. R. R. Co. to recover the said land.

10. For that the master finds that the mortgage bondholders are entitled to be paid out of the proceeds of the sale of the defendant company's property, in preference to this defendant, while the evidence shows that he is entitled to have his debt first paid, because of his first lien under chapter 131 of the Public Laws of North Carolina of 1872-'73, and because of the fact that he did his work upon said road with the full knowledge and consent of said bondholders.

11. For that the master should have found from the evidence that W. H. Inman did not acquire title to the bonds of the counties of Union & Spartanburg by virtue of his transactions with the president of the S. & A. R. R. Co., and that said Inman is accountable to the creditors of said R. R. Co. or said company itself for the par value of said county bonds.

12. For that said master does not find that the said W. H.
717 Inman acquired no lien upon the property of said S. & A. R. R. Co. by virtue of his transactions with the president of said Co. in respect of the said first-mortgage bonds claimed by him as collaterals.

13. For that the said master does not find that the S., U. & C. R. R. Co. acquired no lien upon the property of said defendant company by virtue of its transactions with the president of said defendant company in respect of the said first-mortgage bonds claimed by said S., U. & C. R. R. Co. as collaterals.

14. For that the said master does not find that the other holders of said first-mortgage bonds acquired no lien upon said defendant Co.'s property, by reason of their transactions with the president of said company in respect of said bonds, when he should have found that D. R. Duncan, as president of defendant company, had no power or authority to make contracts to bind said company, and that said company has never ratified his contracts.

15. For that the special master finds that the company was not able to pay the coupons falling due on the 1st day of Janu-
718 ary, 1878, while the evidence shows that no demand was made for payment by any holder of said coupons on said day, and also shows that the assets of the company were worth largely more than the debts of said company at that date, and also shows that after that time the interest upon some of the debts against said company was paid by said company.

16. For that the special master does not find that the Spartanburg, Union and Columbia Railroad Company failed to comply with its agreement to loan the Spartanburg & Asheville R. R. Co. the sum of $70,000.00, & has never yet paid all of said sum; and further, that said S., U. & C. R. R. Company, in violation of its said contract, removed a quantity of railroad iron which it had delivered to said S. & A. R. R. Co. from the possession of said last-named company, and used it for its own purposes.

17. For that the special master finds that the said $70,000.00 was agreed to be loaned to the S. & A. R. R. Co. by John H. In-
719 man, while the evidence shows that the S., U. & C. R. R. Co. agreed to lend said sum; and the evidence shows that the condition that said loan should only be used in paying for work to be done on the road beyond its then terminus, was imposed by the said S., U. & C. R. R. Co., many of its directors and officers being at the same time directors and officers in the defendant company, and that it was a fraud upon this defendant.

18. For that the special master does not find that the contract with the Atlanta Rolling Mill Company was made, through the influence and by the agency of Alfred Austell, who was at the time a stockholder in the S. & A. R. R. Company, and was familiar with its affairs, and knew of the defendant's contract and his work, and consented to the same.

19. For that the special master does not find that the sale or pretended sale by the Atlanta Rolling Mill Co. to V. R. Tommey of the five bonds claimed by him was in violation of the contract between the president of the S. & A. R. R. Co. and the Atlanta Roll-
720 ing Mill Company, and that said Tommey had full notice of the fact, he being at the time president of said Atlanta Rolling Mill Company; and further, that said special master does not find that said V. R. Tommey is not an innocent holder of said bonds, although the evidence shows that he is not, and also shows that he did not acquire title to said bonds by his said pretended purchase of them.

20. For that the special master does not find that said Tommey & said The Atlanta Rolling Mill Company had no debt against the S. & A. R. R. Co., which was due in January, 1878, and that this was was the reason no demand was made for the payment of the coupons of the bonds held by said Atlanta Rolling Mill Company, falling due on said 1st day of January, 1878, while the evidence shows clearly such to be the facts of the case.

21. For that the special master does not find that, at the time this suit was begun, the plaintiffs, nor either of them, had any right to sue for the foreclosure of said mortgage, as the evidence shows that at the time this suit was begun the principal of said mort-
721 gage bonds, nor any of them, was due, and that, as to the plaintiffs, there had not been a default by the defendant company to pay them interest on said bonds, or any one of them, which had continued for six months.

22. For that the special master fails to find that no request was made by the plaintiffs, or either of them, to the trustees named in said mortgage to take possession of the mortgage property and sell the same, or to bring suit to foreclose said mortgage; and fails also to find that the provisions in said mortgage, whereby the entire amount of principal and interest of said bonds is made to become due upon a failure by the defendant company for six months to pay any semi-annual instalment of interest on said bonds, or any one of them, can be taken advantage of only by the trustees named in said mortgage, and confers no right upon any single bondholder, or a

number of bondholders, to have said mortgage foreclosed by suit in their own name.

722 Circuit Court of the United States for the Western District of N. C.

V. R. TOMMEY and THE ATLANTA ROLLING MILL COMPANY
vs.
THE SPARTANBURG AND ASHEVILLE RAILROAD CO. and others.

The defendants, J. E. Fry & J. A. Deal, partners under the name & style of Fry & Deal, except to the report made herein by A. Burwell, Esq., special master, under an order of this court entered in this cause on the — day of ———, 187–.

First exception. For that the said special master has not found by his said report that they have a vaiid lien upon the property of the defendant company, under chap. —, sec. — of Battle's Revisal, to the amount of their debt against [the] company, & have begun a suit in the superior court of Polk county, N. C., to enforce said lien,

and that said lien is superior to the lien of plaintiffs, or any
723 of the holders of the alleged mortgage bonds of the company, if they have a lien at all.

Second exception. For that the said special master has not found by his said report that these defendants did their work upon the property of said company, and furnished materials to build said trestles under a contract with said company, and with the knowledge and consent of said bondholders.

Third exception. For that the said special master has not found that these defendants are entitled to be paid their said debt out of the proceeds of the sale of the property of the company in preference to the holdeas of the alleged mortgage bonds.

And these defendants adopt the exceptions of their co-defendants, E. Clayton and S. M. Rice & R. L. Coleman, partners under the name [and] style of Rice & Coleman, marked 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, & 22.

J. H. MERRIMON,
Sol for Fry & Deal.

724 Circuit Court of the United States, Western District of North Carolina.

V. R. TOMMEY & AT. ROLLING MILL COMPANY
v.
THE SP. &. A. R. R. COMPANY & others.

Thaddeus Coleman, a creditor of said defendant company, who files his petition and claim in this cause, and claims a lien on the property of said company, excepts to the report of the special master herein:

I. For that said master does not report therein as to his said claim, or his rights concerning the same.

II. That said report does not find and state that the said company

is indebteded to him, as stated in said claim, to wit, in the sum of thirty-seven hundred and thirteen & $\frac{97}{100}$ dollars, and interest thereon from the 1st day of October, 1879, and the costs of the action mentioned in said claim to recover said debt.

III. That it does not find and report that he is entitled to
725 have his said debt paid out of the proceeds of the sale of the property of the said company prior to and in preference to the holders of the first mortgage bonds of said company, and their claims, and the claims of all trustees or mortgagees, or the debt created by the receiver under the order of this court.

D. COLEMAN,
Sol. for Thaddeus Coleman.

726 In the Circuit Court of the United States for the Western District of North Carolina.

V. R. TOMMEY and THE ATLANTA ROLLING MILL COMPANY
vs.
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY & others.

The defendants, S. M. Rice & R. L. Coleman, partners under the name & style of Rice & Coleman, except to the report of the special master:

1. For that the special master finds and reports that these defendants have not a first lien, nor any lien, upon the property, rights, and franchises of the defendant, The Spartanburg and Asheville Railroad Company, for their debt.

2. For that the special master finds that D. R. Duncan, president of the S. & A. Railroad Company, was duly authorized to hypothecate the alleged first mortgage bonds of the said S. & A. R. R. Co., when he should have found that said Duncan had no such authority.

727 3. That the special master finds that the alleged mortgage was duly executed on the 1st day of October, 1876, while the evidence shows that the said alleged mortgage was not duly executed at any time, and was not executed in pursuance of the resolutions of the stockholders of the S. & A. R. R. Co. and the resolution of the board of directors of said company, and that said alleged mortgage contained unusual provisions.

4. For that the master finds that said alleged mortgage was duly registered in Spartanburg county, S. C., on June 20th, 1877, while the evidence shows that said alleged mortgage was never duly registered in said county.

5. For that the master finds that all the parties whose names appear upon the detailed list of the debts of the S. & A. R. R. Co., filed by said master, have a valid claim to the mortgage bonds held by them, while the evidence shows that W. H. Inman has not a valid claim to the bonds held by him; and the evidence also shows that
728 none of the creditors holding the said alleged first mortgage bonds as collaterals have a valid claim to the same.

6. For that the master does not find that the loans of money made by W. H. Inman — the S., U. & C. R. R. Co. were at

usurious rates of interest, and that the said D. R. Duncan had no authority to borrow money at such rates of interest.

7. For that the master finds that these defendants have no right to recover that portion of their land over which the said S. & A. R. R. Co. has built its said road, while the evidence shows that said company has no right or title to said land, and has never taken any steps to acquire the same, but that these defendants have title to said land, and defendant company is in the adverse possession of the same.

8. For that the master finds that the mortgage bondholders are entitled to be paid out of the proceeds of the sale of the defendant company's property in preference to these defendants, while the evidence shows that they are entitled to have their debt paid
729 because of their first lien under chapter 131 of the Public Laws of North Carolina of 1872–'73, and chapter 65 of Bat. Rev'l, and because of the fact that they did their work upon said road with the full knowledge and consent of said bondholders, and thereby permanently improved and increased the permanent value of said railroad to the amount of their claim, and more.

9. For that the master should have found, from the evidence, that W. H. Inman did not acquire title to the bonds of the counties of Union and Spartanburg by virtue of his transactions with the president of the S. & A. R. R. Co., and that said Inman is accountable to the creditors of said R. R. Co., or said company itself, for the par value of said county bonds.

10. For that said master does not find that the said W. H. Inman acquired no lien upon the property of the said S. & A. R. R. Co. by virtue of his transactions with the president of said company in respect of the said first mortgage bonds claimed by him as collateral.

730 11. For that the said master does not find that the S., U. & C. R. R. Co. acquired no lien upon the property of the said defendant company by virtue of its transactions with the president of said defendant company, in respect of the said first mortgage bonds claimed by said S., U. & C. R. R. Company as collaterals.

12. For that the said master does not find that the other holders of said first mortgage bonds acquired no lien upon said defendant company's property by reason of their transactions with the president of said company in respect of said bonds.

13. For that the special master finds that the company was not able to pay the coupons falling due on the 1st day of January, 1878, while the evidence shows that no demand was made for payment by any holder of said coupons on said day, and also shows that the assets of the company were worth largely more than the debts of said company at that date, and also shows that after that time
731 the interest upon some of the debts against said company were paid by said company.

14. For that the special master does not find that the Spartanburg, Union & Columbia Railroad Company failed to comply with its agreement to loan the Spartanburg and Asheville R. R. Co. the sum of $70,000.00 and has never yet paid all of said sum; and fur-

ther that said S., U. & C. R. R. Company, in violation of its said contract, removed a quantity of railroad iron which it had delivered to said S. & A. R. R. Co. from the possession of said last-named company, and used it for its own purposes.

15. For that the special master finds that the said $70,000.00 was agreed to be loaned to the S. & A. R. R. Co. by John H. Inman, while the evidence shows that the S., U. & C. R. R. Co. agreed to lend said sum, and the evidence shows that the condition that said loan should only be used in paying for work to be done on the road beyond its then terminus was imposed by the said S., U. &
732 C. R. R. Co., many of its directors and officers being at the same time directors and officers in the defendant company, and that it was a fraud upon these defendants.

16. For that the special master does not find that the contract with the Atlanta Rolling Mill Company was made through the influence and by the agency of Alfred Austell, who was at the same time a stockholder in the S. & A. R. R. Company, and was familiar with its affairs, and knew of defendant's contract and their work, and consented to the same.

17. For that the special master does not find that the sale or pretended sale by the Atlanta Rolling Mill Co. to V. R. Tommey of the five bonds claimed by him was in violation of the contract between the president of the S. & A. R. R. Co. and the Atlanta Rolling Mill Company, and that said Tommey had full notice of the fact, he being at the time president of the Atlanta Rolling Mill Company; and further, that said special master does not find that said
733 V. R. Tommey is not an innocent holder of said bonds, although the evidence shows that he is not, and also shows that he did not acquire title to said bonds by his said pretended purchase of them.

18. For that the special master does not find that said Tommey and said Atlanta Rolling Mill Company had no debt against the S. & A. R. R. Company, which was due in January, 1878, and that this was the reason no demand was made for the payment of the coupons of the bonds held by said Atlanta Rolling Mill Co., falling due on said 1st day of January, 1878, while the evidence shows clearly such to be the facts of the case.

19. For that the master does not find that at the time this suit was begun the plaintiffs, nor either of them, had any right to sue for the foreclosure of said mortgage, as the evidence shows that at the time this suit was begun the principal of said mortgage bonds, nor any of them, was due, and that as to the plaintiffs, there had not been a default by the defendant company to pay the interest
734 on said bonds, or any one of them, which had continued for six months.

20. For that the special master fails to find that no request was made by the plaintiffs, or either of them, to the trustees named in said mortgage, to take possession of the mortgag-d property and sell the same, or to bring suit to foreclose said mortgage; and fails also to find that the provision in said mortgage, whereby the entire amount of principal and interest of said bonds is made to become

due upon a failure by the defendant company for six months to pay any semi-annual instalment of interest on said bonde, or any one of them, can be taken advantage of only by the trustees named in said mortgage, and confers no right upon any single bondholder, or a number of bondholders, to have said mortgage foreclosed by suit in their own name.

21. For that the special master fails to find that the said work, the basis of their claim, was done by these defendants with the knowledge and consent and encouragement of, in the expectation
735 of being paid therefor by said company, of said company and of the plaintiffs, bondholders, and trustees thereof, they, said persons, then knowing of the existence of said deed in its then condition.

22. For that he failed to find that the said work and the road-bed, road, trestles, and other erections thus made by these defendants, made and constitute permanent improvements and permanent increase of the value of said road to an amount fully as great and more than that of their said claim and debt, and was made and done with the knowledge and consent of said company, the plaintiffs, and bondholders.

23. For that he fails to find that these defendants are entitled to the benefit of said acts of 1872–'73, chapter 131, and Bat. Rev., ch. —.

24. For that the special master fails to find that these defendants are entitled to a first lien, and to be first paid their said debt in preference to the plaintiffs, bondholders, or mortgagees of said company, or their assigns, or the debt created by the receiver herein, under the order of the court.

736 25. For that he fails to find that these defendants have a valid judgment against said company, rendered by the superior court of Henderson, at its spring term, 1879, which is docketed in said court, and that it is a lien on the property of said company as such, and also in that it declares a lien under the "mechanics' and laborer's lien law."

D. COLEMAN AND M. E. CARTER,
Attor's & Sol's.

737 Circuit Court of the United States, Western District of North Carolina.

V. R. TOMMY and ATLANTA ROLLING MILL COMPANY
v.
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY and others.

H. H. Gramling, a creditor, excepts to the report of the special master herein—

For that said special master does not find that he is entitled to have his debt against the defendant company paid in preference to the debts of the holders of the mortgage bonds, or the debts of the holders of the receiver's certificates, out of the proceeds of the sale of the property of said defendant company.

J. H. MERRIMON,
Sol. for Gramling.

738 Circuit Court of the U. S., West. Dist. N. C., in Equity.

V. R. TOMMY & ATLANTA ROLLING MILL COMPANY
vs.
THE SPARTANBURG & ASHEVILLE RAILROAD COMPANY and others.

W. P. Fortune, a creditor, excepts to the report of the special master herein—

1. For that the said special master does not find that he is entitled to be paid his debt against the S. & A. R. R. Co. in preference to the debts of the holders of the 1st mortgage bonds of the company, or the holders of the receiver's certificates.

J. H. MERRIMON,
Sol. for Fortune.

739 Circuit Court of the United States, Western District of North Carolina. December Term, 1879.

TOMMEY & others
vs.
SPARTANBURG & ASHEVILLE RAILROAD COMPANY and others.

T. G. Williamson, by his counsel, excepts to the report of the special master, A. Burwell—

1st. That according to the testimony this claim should have been allowed. It appearing that the claimant was an employee of the company after the execution of the mortgage by & with the consent of the trustees in the said mortgage, and that the services rendered by the said Williamson were necessary and indispensable to the building of the road, &c.

SHIPP & BAILEY,
Solicitors.

740 In the Circuit Court of the United States for the Western District of North Carolina.

V. R. TOMMEY & others
against
THE SPARTANBURG RAILROAD CO. and others.

Defendant, John Garrison excepts to the report of the special master in this case—

I. For that the said special master has not found by his report that this defendant has a lien upon the said mortgage property under the provisions of sec. 1, chap. —, Battle's Revisal, as claimed by him in his answer, when the evidence shows that he had such lien, and had begun proceedings in the superior court of Polk county, North Carolina, to enforce the same.

II. For that the master finds that this defendant has no preference, under chapter 131 of the public laws of North Carolina of 1872–'73, to be paid out of the proceeds of the sale before the mortgage bondholders, when the evidence shows that he had such preference, and because of the fact that he did his work and furnished

his material with the full knowledge and consent of the said
741 bondholders.

III. For that the said master does not find that this defendant furnished all the material for the Mills Creek trestle, when the evidence shows that he did furnish said material, as alleged in his answer.

W. J. MONTGOMERY,
Sol'r for Def't, Jno. Garrison.

And at our said stated term of said court, to wit, December term, 1879, and on the 20th day of said month, the plaintiffs file their exceptions to the master's report, in words and figures as follows, to wit:

742 United States Circuit Court for Dist. of N. C., Western District, Charlotte, N. C. December Term, 1879.

ATLANTA ROLLING MILL CO. *et al.*, Pl'ffs,
vs.
THE SPARTANBURG & ASHEVILLE R. R. CO. *et al.*, Def'ts.

Exceptions of Pl'ffs to the Report of the Special Master.

1. That the master does not find, as conclusions of law, that this court has jurisdiction to try and determine the validity or invalidity of the claims of J. E. Fry & J. A. Deal, partners, under the name & style of Fry & Deal, John Garrison, and S. M. Rice & R. L. Coleman, partners under the name & style of Rice & Coleman, set up here and in the State court by them, under the "Mechanics' & Laborers'" lien law of the State of North Caroliua; and—

2. That he does not find that said parties have no lien upon the road superior to the mortgage, or at all.

3. Because he does not find that E. Clayton & Co. and E. M. Rice & R. L. Coleman, partners, under the name & style of Rice & Coleman, have no valid claim to right of way, as against the S. & A. R. R. Co., by virtue of any title they have acquired to the lands over which the said road is constructed; or,

743 4. If they have acquired any such right of way, that he does not find that they hold it in trust for the R. R. Co., on the repayment of any sum, to wit, $25.00, of money properly expended therefor; or,

5. If they have any claim for damages to these lands that he does not find that they must assert their claim in this suit, or in the State courts, by proper proceedings to be instituted by them.

6. That he does not find that the mortgage was duly registered in Polk county on the 3rd day of December, 1877; in Henderson county January 12th, 1878, and in Buncombe county January 21st, 1878.

THOMSON.
RION.
BYNUM.

I concur in the foregoing exceptions.

J. H. RION,
For Inman.

744 At said December term, 1879, and on said 20th day of December, 1879, W. H. Inman. a creditor, files in said court his exceptions to the special master's report, which said exceptions are in words and figures as follows, to wit:

745 United States Circuit Court for the Western District of North Carolina. In Equity.

V. R. TOMMEY *et al.*,
vs.
THE SPARTANBURG AND ASHEVILLE RAILROAD CO. *et al.*

William H. Inman, as a creditor, separately excepts to the report of A. Burwell, Esquire, referee—

I. For that the said referee held as to this exceptant's claim, No. 3, that he agreed to advance to the extent of fifty per centum of the bonds put in his possession.

II. For that the said referee held that this exceptant is entitled to prove said bonds, only to double the amount of his debt, to wit, thirty-nine thousand seven hundred and eighty-seven dollars, and that he holds the remainder of said bonds, to wit, sixty thousand two hundred and thirteen dollars, for the company.

III. For that the said referee did not hold that this exceptant held the bonds received by him on the 10th day of Septem-
746 ber, 1877, "as collateral security for the payment of any loans or advances of money made, or to be hereinafter made by me [him] to said Duncan, pres't, &c., [of the Spartanburg and Asheville Railroad Company]; and the same to be as held and applied until any and all loans and indebtedness are fully paid."

JAS. H. RION,
Sol. for Wm. H. Inman

And at the said term of our said court, to wit, December term, 1879, and on the 20th day of said month, petitions are filed in the said court by the following parties, and in the order hereinafter set forth, viz., W. P. Fortune, H. H. Gramlin, T. G. Williamson, R. W. Allen, A. Cannon, & J. P. Johnston, partners under the name & style of Allen, Cannon & Co.; Geo. C. Perrin, M. J. Fagg, and Thadeus Coleman, which said petitions are in words and figures as follows, to wit:

747 Circuit Court of the United States for the Western Dist. N. C

V. R. TOMMEY & THE ATLANTA ROLLING MILL COMPANY
vs.
THE SPARTANBURG & ASHEVILLE RAILROAD COMPANY & Others.

The petition of W. P. Fontaine shows that he is a creditor of the defendant, The Spartanburg & Asheville Railroad Company, to the amount of two thousand and ninety-eight $\frac{88}{100}$ dollars; that of said sum, eight hundred and seventy-four $\frac{78}{100}$ dollars was for work done by pet'r in grading the road of said defendant company, & bears interest from July 5th, 1876, and the balance of eight hundred and

seventy-five dollars was for mules, carts, and railroad shanties. The entire sum was due on the 5th day of July, 1876, & bears interest from that date. That said work was done, and the mules, carts, and railroad shanties furnished said defendant company long prior to the time of making by said company the mortgage for the foreclosure of which this suit was begun, and under contracts with
748 said defendant company, entered into between petitioner and said company prior to the execution of said mortgage.

This petitioner further shows that he has a first lien upon the property, rights, & franchises of said defendant company to the extent of his said debt, and is entitled to have his said debt paid in preference to the debts of the holders of the mortgage bonds of said company; that his said lien is expressly conferred by the laws of the State of North Carolina.

Your petitioner therefore prays that he may be decreed by this honorable court to have a first lien as claimed, & to be paid first out of the proceeds of the sale of the property, rights, and franchises of the said defendant company, & as in duty bound will ever pray.

J. H. MERRIMON,
Sol. for Pet'r.

749 In the Circuit Court of the United States for the Western Dist. of N. C. In Equity.

V. R. Tommey and The Atlanta Rolling Mill Company

v.

The Spartanburg and Asheville Railroad Company and others.

The petition of H. H. Gramling shows that he is a creditor of the defendant, The Spartanburg and Asheville Railroad Company, to the amount of thirty-one hundred and thirty-six $\frac{40}{100}$ dollars. Of this sum twenty-five hundred and thirteen $\frac{90}{100}$ dollars, & its interest, as shown by report of special master in this cause, was for work of construction and materials furnished said company, & the balance is for cross-ties and engine wood supplied to and used by said company.

That his work of construction on the road of said company was done for, and the material as aforesaid furnished to, & used by, said company long prior to the registration of the mortgage, the foreclosure of which is sought in this suit, and said work was done & materials furnished by this petitioner with the full knowledge
750 and with the consent of the holders of the mortgage bonds of said company—several of the holders of said bonds, namely, W. H. Inman, Geo. W. Williams, G. Cannon, John H. Evins, John B. Cleveland, W. K. Blake, & others, as shown by the evidence reported by the special master, being directors of said company at the time said work was done & materials furnished; and the Spartanburg, Union & Columbia R. R. Co., claiming two hundred & twenty-four thousand dollars of said mortgage bonds, was, at the time said work was done & materials furnished, a large stockholder in said defendant company, and many of the officers of said S., U. & C. R.

R. Co. were, at said time, likewise officers in the said S. & A. R. R. Co., the def't, & knew of petitioner's contract with said company, and consented to the same; and Alfred Austell, at the time said work was done & materials furnished by your petitioner, was a stockholder and agent of the Atlanta Rolling Mill Company, and also a stockholder and director in the S., U. & C. R. R. Co., and a stockholder in the S. & A. R. R. Co., and knew of defendant's
751 contract with the said S. & A. R. R. Co. and consented to the same.

Petitioner further shows that the work done by him largely increased the permanent value of the property of said defendant company, & that said work and materials were supplied by this petitioner to said company through his own means and at his own expense, and this petitioner claims that he is entitled in law and equity to have his said debt paid out of the proceeds of the sale of the defendant company's property, in preference to the debts of the holders of the mortgage bonds of said company, & prays this honorable court to make a decree accordingly.

And as in duty bound will ever pray.

J. H. MERRIMON,
Sol. for Petitioner.

752 Circuit Court of the United States, Western District of North Carolina.

TOMMEY & ATLANTA ROLLING MILL
vs.
SPARTANBURG & ASHEVILLE RAILROAD COMPANY.

The petition of T. G. Williamson shows:

That he is a creditor of the defendant to the amount of one thousand dollars for services rendered to it.

That he was employed by the defendant as an assistant civil engineer on the 1st day of August, 1875, and at the rate of one hundred and twenty-five dollars per month for his services. That he performed the service required of him continuously from the 1st day of August, 1875, to May 1st, 1878.

He states specially that he performed the services in his capacity as engineer, &c., upon the defendant's road from the 1st day of October, 1876, to the 1st day of May, 1878. That his services in "said capacity" were not only important, but greatly to the interest and advantage of the property conveyed in trust, and that the same has been fully recognized by the company and its trustees.

That his services from the said 1st October, 1876, to May 1st, 1878, amounted to more than two thousand dollars.

753 He admits, however, that he has rec'd payments from time to time since October, 1876, and that the amount due him on that day, May 1st, 1878, was one thousand dollars, as aforesaid. He cannot state the exact amount.

Petitioner asks that his said claim may be audited & passed upon by the referee appointed by the court at its last term, and that the same, or the amount due, may be allowed, &c.

MORRIS, SHIPP & BAILEY, *Atto's.*

754 Circuit Court of the United States, Western Dis't of N. C.

V. R. TOMMEY & ATLANTA ROLLING MILL COMPANY

vs.

THE SPARTANBURG AND ASHEVILLE RAILROAD CO. *et al.*

The petition of R. W. Allen, A. Cannon, & J. P. Johnston, Sr., partners under the name and style of Allen, Cannon & Co., shows: That they are creditors under said firm name of the defendant, The Spartanburg & Asheville Railroad Company, to the amount of two thousand seven hundred & ten $\frac{53}{100}$ dollars, with interest at the rate of 7 per cent. per annum from the 1st day of January, 1877, until paid, & $12.05 costs of an action by pet'rs against defendant company in superior court of Henderson county, wherein pet'rs recovered judgment against said company.

That on the 30th day of March, 1875, & prior to the execution of the mortgage, the foreclosure of which is sought in this suit,
755 your petitioners entered into articles of agreement with defendant company, which agreement is fully reported by the special master, and for the particulars of said agreement reference is made to said report; that under said agreement petitioners graded a part of the road of said defendant company, and thereby added greatly to the permanent value of the property of said company; that most of the holders of the mortgage bonds of said company knew of the contract of petitioners with said company & consented to the same; that at the time said contract was made, W. H. Inman, G. Cannon, John H. Evins, W. R. Blake, Geo. W. Williams, & others of the holders of said bonds, were officers of, or otherwise connected with, the Spartanburg & Asheville R. R. Co., and many of the directors and officers of the Spartanburg, Union & Columbia R. R. Co. were at said time likewise officers of the defendant company; and Alfred Austell at said time was a stockholder and agent of the Atlanta Rolling Mill Co., and also a director & stockholder of the
756 said Spartanburg, Union & Columbia R. R. Co., & a stockholder in the defendant company, & had full knowledge of pet'rs' contract with defendant company, & consented to said contract.

Petitioners show further that by the laws of North Carolina they have, by virtue of their said contract, a first lien upon the property rights & franchises of the defendant company, and are entitled to have their said debt paid in preference to the debts of the holders of the mortgage bonds of said defendant company; and further, that their work having been done with the knowledge and consent of the holders of said bonds, your petitioners are likewise upon this ground entitled to be paid first, and they pray this hon'l. court to decree accordingly. And, as in duty bound, will ever pray.

J. H. MERRIMON,
Sol. for Pet'rs.

757 In the Circiut Court of the United States for the Western District of N. C.

V. R. TOMMEY & ATLANTA ROLLING MILL COMPANY
v.
THE SPARTANBURG AND ASHEVILLE R. R. Co. & others.

The petition of Geo. C. Prince shows that he is a creditor of the defendant, The Spartanburg and Asheville R. R. Co., to the amount of twelve hundred and fifty-eight $\frac{74}{100}$ dollars, with interest on eleven hundred and eighteen $\frac{57}{100}$ dollars from the 2d day of June, 1879, until paid, and eleven $\frac{75}{100}$ $ costs of an action by petition- against said company, in the superior court of Henderson county, wherein he recovered judgment against said company; that he was employed by the defendant company as an assistant engineer long prior to the date of the mortgage, the foreclosure of which is sought in this suit; that his employment was continued after said mortgage was made by and with the consent of all or nearly all of the holders of the mortgage bonds of said company; that he

758 performed services for said company in surveying and locating the track of its road, and estimating the work of the contractors on said company's road; that said services were important and greatly increased the permanent value of said company's property, and were rendered with the full knowledge and consent of W. H. Inman, who was, all the time of petitioner's employment, a director in said company, of Alfred Austell, who was a stockholder in & agent of the Atlanta Rolling Mill Company, of W. H. Inman, D. R. Duncan, G. Cannon, John H. Evins, Alfred Austell, R. Y. McAden, who were officers of the Spartansburg, Union & Columbia Railway Co., of Geo. W. Williams, John H. Evins, W. N. Blake, G. Cannon, and others, who were officers and directors of the defendant company.

Petitioner claims that he is entitled both at law & in equity to be paid his debt out of the proceeds of the sale of the property of said company in preference to the holders of the mortgage bonds of said company, and prays this hon'l. court to decree accordingly. And as in duty bound will ever pray,

J. H. MERRIMON,
Sol. for Pet'r.

759 Circuit Court of the United States for the Western District of North Carolina.

V. R. TOMMEY & THE ATLANTA ROLLING MILL CO.
v.
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY and others.

The petition of M. J. Fagg shows that he is a creditor of the defendant, The Spartanburg and Asheville Railroad Company, to the amount of fourteen hundred and fifty two $\frac{05}{100}$ dollars; that said sum is due him from said company for grading done upon the road of said company; that said work was done under a contract with said defendant company made long prior to the execution by

said company of the mortgage, to foreclose which this suit was brought.

Your petitioner further shows that his said work was completed before said mortgage was registered, and his said debt was due and owing before said registration; that all the work done by your
760 petitioner after the date of the alleged execution of said mortgage was done with the full knowledge and consent of all or nearly all of the holders of the 1st mortgage bonds, and indeed before said bonds passed out of the possession of said defendant company, and was work of construction on said road, and greatly enhanced its permanent value.

Your petitioner further shows that he has, by virtue of the laws of North Carolina, a first lien upon the property rights and franchises of the said defendant company, and is entitled to have his said debt paid out of the proceeds of any sale of the property of said company in preference to the debts of the holders of the bonds of said company, and prays this honorable court to decree accordingly; and as in duty bound will ever pray.

J. H. MERRIMON, *Sol. for Pet'r.*

761 Circuit Court of the United States, Western District of North Carolina.

V. R. Tommey and Atlanta Rolling Mill Comp'y

vs.

The Spartanburg & Asheville Railroad Company & others.

The petition of Thaddeus Coleman shows: That he is a creditor of the defendant Spartanburg and Asheville Railroad Company to the amount of thirty-seven hundred and thirteen and $\frac{97}{100}$ dollars, and interest thereon from the 1st day of October, 1878, until paid, for services rendered and expenditures made by him at its request, and the costs of *of* the action hereinafter mentioned.

That he was and acted as the chief engineer of said company at its request at a salary of twenty-five hundred dollars per year, agreed on between him and said company, from the organization thereof on the 31st day of July, 1874, until the 1st day of October, 1878.

That during all said time he faithfully performed the services required of him and the duties of his said office.

He states specially that he continued to perform such services,
as aforesaid, in locating the same, making estimates of the
762 work, supervising the construction and repair of its railroad, and performing all the labors and duties of his said office from the first day of October, 1876, until the 1st day of October, 1878. That on said day there was due to him from said company as the unpaid balance of his said salary the sum of thirty-three hundred and sixty-four and $\frac{26}{100}$ dollars ($3,364.26.)

That during said time he also expended for the benefit and at the request of said company "in engineering expenses," necessary and incident to his said service and necessary to said company, the sum of three hundred and forty-nine and $\frac{71}{100}$ dollars, ($349.71).

That on said 1st day of October, 1878, the said company was thus indebted to him in the sum of thirty-seven hundred and thirteen and $\frac{97}{100}$ dollars ($3,713.97,) which was acknowled on the part of said company by the account stated and rendered to this petitioner by the secretary and treasurer thereof, (correcting an arithmetical error apparent on the face of said account and statement); a copy of which (accompanying and embraced in the transcript hereinafter mentioned) is herewith filed and exhibited, and the said debt has never been paid, nor any part of it.

763 That at the spring term, 1879, of the superior court of Henderson county, a judgment was duly rendered by said court in favor of this petitioner against said company for his said debt and interest, to wit, for the sum of thirty-eight hundred and sixty-five dollars, ($3,865.00,) with interest on $3,713.97, the principal sum, until paid, and for the costs of said action to be taxed by the clerk, which judgment was duly docketed in said court, and a transcript thereof and of the record of the said action is herewith filed as an exhibit, marked ——, which judgment has not been paid, nor any part thereof.

That his said services were of great importance and value to said company and their said railroad, and were indispensable to the construction, repair, and safe and successful operation thereof.

That his said services and expenditures greatly and permanently improved and greatly increased the permanent value of said railroad, and to much more than the amount of this petetioner's said debt.

That the plaintiffs and the trustees, mortgagees and bondholders of said company, knew of the premises and of the said ser-

764 vices of this petitioner at and during the time they were being rendered, and consented to and encouraged the same, and the said company and property have received the benefit thereof.

That from on or about the first of October, 1876, until the first of October, 1878, and during all the time this petitioner was performing the unpaid for services and expenditures aforesaid, the said company continuously carried on the work of construction and permanent improvement and extension of said railroad at great costs expending therefor from more than the unpaid salaries and dues of this petitioner and of all the officers and employees of said company, and continuously expended far more than the amount of such debts accrued or accruing during the corresponding periods of said expenditures and accrued or accruing indebtedness.

This petitioner claims that the funds thus expended, in equity, to the amount of his said debt, belong to him, and having been so diverted to another use, he is entitled to the preference herein

765 claimed for reimbursement. And that he is entitled to have his said debt allowed, and that it shall have preference over the claims of the plaintiffs, and all trustees, holders of receiver's certificates, or claimants under said the present or any other receiver of said railroad mortgages, or bond holders, and all creditors of said company not having debts of equal right with that of this defendant; and he prays that this honorable — will so decree, and for such

other and further relief as the nature of his case may require and to said Hon. court may seem —, and petitioner will ever pray.

D. COLEMAN,
Sol. for Petitioner.

And at said December term, 1879, of said court, on the 22d day of said month, counsel for the defendants file in the said court an agreement that the taking of testimony should be closed on the 20th of November, 1879, in the words and figures as follows, to wit:

766–776 Circuit Court of the United States, Western District of North Carolina.

V. R. TOMMEY *et al. vs.* THE S. AND A. R. R. Co. *et al.*

In this cause, it is agreed by the undersigned counsel for the parties that the taking of testimony in the case shall be closed on the 20th of November, 1879, at Charlotte, or such other place as the referee may appoint, and that the report may be filed at any time before the 2d Monday in December, 1879, as of Nov. 1st, 1879.

D. COLEMAN,
M. E. CARTER,
J. H. MERRIMAN,
Of Counsel for Defendants.

At the said December term, 1879, and on the 22nd day of said month, an order was made and passed, making the trustees' parties plaintiffs, &c., which said order is in the words and figures as follows, to wit:

777 In the Circuit Court of the United States for the Western District of North Carolina, at Charlotte, N. C. December Term, 1879.

V. R. TOMMY and ATLANTA ROLLING MILL Co.
vs.
THE SPARTANBURG AND ASHEVILLE R. R. Co. *et al.* } In Equity.

It appearing to the court that William H. Inman and John B Cleveland, as trustees named in the mortgage to secure the first mortgage bondholders of the Spartanburg and Asheville R. R. Co., should be made parties complainants in above stated case, it is ordered by the court that said bill be retained, and that the same be amended by adding the names of the said trustees in their official capacity as parties complainant, adding to the bill now filed any appropriate allegation, and that any defendant who has al-
778 ready answered have leave to let his answer stand as an answer to the amended bill, or to file a new answer thereto. It is further ordered that all the orders heretofore passed remain of force as if made under the amended bill, and that all reference already had and reports made also stand of force as if held and made under amended bill, with leave, however, for any party to introduce new testimony and to have a supplemental report thereon. It is

further ordered that the trustees have until rule day in January next to have the amended bill filed, and that the defendants have until thirty days after the filing of said amended bill to file their new answers, should they be minded to file such answers.

HUGH L. BOND,
Dec. 22nd, 1879. *Ct. Judge.*

779 At the aforesaid December term, 1879, and on said day, to wit, December 22nd, 1879, the defendants, the commissioners of Buncombe county, E. Clayton, and J. E. Fry & J. A. Deal, partners under the name & style of Fry & Deal, file in said court exceptions to the ruling of the court, which said exceptions are in words and figures as follows, to wit:

780 Circuit Court of the United States, Western District of North Carolina. Dec. Term, 1879.

V. R. TOMMEY, *et al.*
vs.
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY, and others.

The defendants, the commissioners of Buncombe county, E. Clayton, J. E. Fry & J. A. Deal, partners under the name & style of Fry & Deal, except to the ruling of the court made at this term:

First exception. For that the court ruled that the Spartanburg & Asheville Railroad Company had been properly made party to this action.

Second exception. For that the court granted leave for the trustees in the mortgage to become plaintiffs in this cause without requiring the original parties plaintiff to pay costs.

Third exception. For that the court continued in force the order allowing the receiver in this cause to issue certificates a first lien upon the road and other property of the S. & A. R. R. Co.
781 for the purpose of building the road from its terminus at the time of the appointment of the receiver to the town of Hendersonville, in the county of Henderson.

J. R. MERRIMON,
Sol. for above-named Deft's.

At the aforesaid December term, 1879, of said court, and on the 22nd day of said month, an order allowing the Spartanburg and Asheville Railroad Company to amend answer was made and passed in words and figures as follows, to wit:

782 Circuit Court of the United States, Western District of North Carolina.

CHARLOTTE, *December Term*, 1879.

ATLANTA ROLLING MILL CO. *et al.*,
vs.
THE SPARTANBURG AND ASHEVILLE R. R. CO., *et al.*

On motion of Evins & Boman, and Bobo, attorneys for the Spartan-

burg and Asheville Railroad Co., defendant, and by consent of attorneys for the complainant, ordered that the defendant, the Spartanburg and Asheville R. R. Co., have leave to amend their original and amended answers, by alleging the said original and amended answer to be the answer of the Spartanburg and Ashevile Railroad Company, under the common seal of the said corporation; which may be made to appear by the affixing of said seal to the answer so amended as aforesaid.

Dec. 22nd, 1879. HUGH L. BOND, *C't Judge.*

783 And on another day, to wit, January 8th, 1880, complainants filed an amended bill in said court, which said bill is — words and figures as follows, to wit:

784 In the Circuit Court of the United States for the Western District of North Carolina. In Equity for Foreclousure, &c.

V. R. TOMMEY and THE ATLANTA ROLLING MILL COMPANY
vs.
THE SPARTANBURG & ASHEVILLE RAILROAD COMPANY *et al.*

William H. Inman, a citizen of the State of New York, and John B. Cleveland, a citizen of the State of South Carolina, averring themselves to be the trustees named in a certain deed of trust or mortgage made and executed to them by the said Spartanburg and Asheville Railroad Company, referred to in the original bill filed by the plaintiffs herein named against the defendants hereinbefore named (a copy of which is attached thereto as an exhibit, by leave of the court first had and obtained, hereby make themselves and become parties plaintiff to said bill & cause, and by way of amend-
785 ment to said bill come in, in their official capacity as complainants therein, and add*o*pt and reaffirm the allegations of said bill, and further charge that at the time said bill was filed, and for more than six months prior thereto, to wit, ten months or more, the said Spartanburg and Asheville Railroad Company was insolvent. That it had not paid, and was unable to pay, any of the interest coupons on its said bonds due January 1st, 1878, of which there were at that time outstanding, and in the hands of *bona fide* holders, mortgage bonds of the amount of five hundred thousand dollars or more; that the South Carolina Railroad Company was the holder and owner of its said bonds, to wit, Nos. —, for the sum of
786 one thousand dollars each, upon each of which default had been made by the said Spartanburg and Asheville Railroad Company in the payment of the interest due thereon on the 1st day of January, 1878, so that on and after the said first day of January, 1878, up to the filing of said bill and hitherto, said Spartanburg and Asheville Railroad Company has been indebted to said South Carolina Railroad Company said interest due January 1st, 1878, so that default in the payment of said January interest continued for the space of six months and more; and whereby the bonds of said Spartanburg and Asheville Railroad Company, so held and owned by said South Carolina Railroad Company, and all other the mortgage bonds

issued by said Spartanburg and Asheville Railroad Company,
and held and owned by all other bondholders of said com-
787 pany by the terms and provisions of said mortgage before
referred to, become and were due and payable at and before
the filing of said bill of complaint; and by way of further amend-
ment to said bill of complaint, these trustees and complainants aver
& allege that the defendant railroad company, prior thereto & up to
the filing of said bill, had committed a further breach of the cove-
nants contained in said mortgage, in this that the said railroad com-
pany had neglected and failed to pay or cause to be paid any and
all of the taxes levied & assessments imposed upon the premises,
franchises, and property so mortgaged, to wit, for the year 1878, by
the State and county authorities in the county of Spartanburg,
South Carolina, and the counties of Polk and Henderson,
788 North Carolina, the same having been levied, assessed, and
imposed in due course of law, and justly due and owing, to
wit, the sum of $——. And further, these trustees, as complain-
ants, join in the prayer of the original bill for foreclosure and sale of
the property, real and personal, of the said Spartanburg and Ashe-
ville Railroad Company, and to this end they pray that they, the
said trustees, in and by virtue of the said mortgage, be fully author-
ized and empowered, by order of this court, for the purposes of
said foreclosure and sale as provided by the terms of said mort-
gage or deed of trust, to enter upon and take possession of said
railroad and premises, real and personal, conveyed or intended so
to be, and make sale of said railroad premises and appurtenances,
and of all benefit and equity of redemption and legal and
789 equitable right of said Spartanburg and Asheville Railroad
Company hereto, and to apply the proceeds of said sale as
provided in and by the terms and under the conditions of said mort-
gage, and in accordanca with directions and orders of this honor-
able court court, and the said trustees join in all general and special
relief prayed for in said original bill which may not be inconsistant
with their duties and rights as such in the premises.

And they will ever pray, &c.

W. P. BYNUM,
W. S. THOMPSON,
Sol's for Compl'ts.
CARLISLE & SIMPSON,
Sol's for J. B. Cleveland, Trustee.

THE STATE OF SOUTH CAROLINA, *County of Spartanburg:*

John B. Cleveland, being duly sworn, says that he is trustee as
790 above set forth, and that the foregoing complaint is true so
far as the facts therein stated come within his own knowl-
edge, and that as to the rest he believes the same to be true.

JOHN B. CLEVELAND.

Sworn to before me, this 1st Janu'y, 1880.
[SEAL.] F. M. FRIMMIER, *Clerk.*

UNITED STATES OF AMERICA,

STATE OF NEW YORK, } ss:
City and County of New York, }

William H. Inman, being duly sworn, says that he is a trustee as above set forth, and that the foregoing complaint is true so far as the facts therein stated come within his own knowledge, and that as to the rest, he believes the same to be true.

WM. H. INMAN.

Sworn to before me, this 6th day of January, A. D. 1880.
[SEAL.] EDWIN F. CORRY,
Commissioner for the State of North Carolina in New York.

791 And on another day, to wit, January 13th, 1880, at the request and by the direction of counsel for the complainants, a writ of subpœna was issued against the defendant, the Spartanburg and Asheville Railroad Company, returnable on the 2nd Monday in February, 1880, which said subpœna is in words and figures following, to wit:

792 Circuit Court at Charlotte.

UNITED STATES OF AMERICA, } ss:
Western District of North Carolina, }

The United States of America to the Spartanburg and Asheville Railroad Company:

We command you, and every one of you, that you appear before the judges of our circuit court of the United States of America for the western district of North Carolina, at the office of the clerk of the said court, in the town of Charlotte, in said district, on the 1st Monday in the month of February next, to answer the bill of complaint of the The Atlanta Rolling Mill Co., W. H. Inman, J. B. Cleveland, trustees, & others, filed in the clerk's office of said court, in said town of Charlotte, then and there to receive and abide by such judgment and decree as shall then or thereafter be made,
793 upon pain of judgment being pronounced against you by default.

To the marshal of the disiricts of North Carolina to execute.

Witness, the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Charlotte, in said district, the 2d Monday in December, 1879, and in the 104 year of the Independence of the United States.

Issued the 13th day of January, 1880.

H. C. COWLES, *Clerk.*

Said Subpœna returned, endorsed as follows, to wit:

"STATE OF SOUTH CAROLINA, *County of Spartanburg:*

"J. E. Gyles, deputy U. S. marshal for the State of South Carolina, being duly sworn, says: That he served the subpœna in this action

on the Spartanburg and Asheville Railroad Company, defendant, by delivering to D. R. Duncan, the president thereof, personally, and leaving with him a copy of the same at Spartanburg C. H.,
794 South Carolina, on the 23rd day of January, A. D. 1880, and that he knows the said D. R. Duncan, with whom said copy was left and so served, to be president of said Spartanburg & Asheville Railroad Company mentioned and described in the said subpœna, and the deponent is the deputy U. S. marshal in and for the State of South Carolina duly commissioned.

"JNO. E. GYLES.

"Sworn to before me, 23rd Jan'y, 1880.

"GEO. W. NICHOLLS,

"*Judge of Probate for Spartanburg County,*

"*State of South Carolina.*"

795 And on another day, to wit, January 30th, 1880, the defendants, The Spartanburg & Asheville Railroad Company, J. E. Fry & J. A. Deal, partners under the name & style of Fry and Deal, the board of commissioners of Buncombe county, and E. Clayton, by their respective counsel, file in said court their answers to the amended bill of complaint, which said answers are in words and figures following, to wit:

796 Circuit Court of the United States, Western District of North Carolina.

V. R. Tommey and The Atlanta Rolling Mill Company
vs.
The Spartanburg and Asheville Railroad Company *et al.*
} In Equity.

The Spartanburg and Asheville Railroad Company, defendant corporation, by this their amended answer, leave of the court to that end having been first had and obtained, under the common seal of said corporation, for answer say:

I. That the original answer, as well as the first amended answer by D. R. Duncan, president of the Spartanburg and Asheville Railroad Company, heretofore filed in this cause, were and are the answers of the defendant corporation, and that the admissions
797 and statements therein contained are correct and true. And the said The Spartanburg and Asheville Railroad Company, defendant corporation, crave leave to refer to the said original and amended answers now remaining filed in this cause, for the purpose and to the end that said defendant corporation do hereby make, adopt, and reaffirm the admissions, allegations, and statements therein, the same as if herein repeated, and are made as fully and completely the answers of said defendant corporation as if made originally under their common seal.

II. The defendant corporation admits the allegations contained in the amended complaint filed in this cause by Wm. H. Inman and

John B. Cleveland, trustees, and the defendants cannot deny or dispute the rights of the said trustees under the terms and by
798 virtue of the trust deed in the premises to enter upon and take charge of the property of the said The Spartanburg and Asheville Railroad Company for the purposes therein set forth. And this defendant corporation prays such orders and decrees may be made in the premises as shall do full and ample justice to all the parties in interest, and to this court may seem meet and proper.

Having answered so far as advised, it is necessary or material for said defendant corporation to answer; they pray to be hence dismissed, &c.

THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY,
[SEAL.] By D. R. DUNCAN, *President.*

Attest:
WM. K. BLAKE, *Secretary & Treasurer.*

799 In the Circuit Court of the U. S. for the Western District of N. C.

The separate answer of J. E. Fry and J. A. Deal, partners under the name and style of Fry & Deal, two of the defendants to the amended bill of complaint of V. R. Tommey and The Atlanta Rolling Mill Company.

The defendants now, and at all times hereafter, reserving all manner of benefit and advantage to themselves, of exception to the many errors and insufficiencies in said amended bill contained for answer thereto, or unto so much or such parts thereof as these defendants are advised is material for them to make answer unto, they answer, and say:

They adopt and reanswer the denials contained in their answer to the original bill herein, and adopt all the allegations and statements of facts contained in their said answer, and hereby incorporate said answer into and make it part of this answer.

They admit that William H. Inman is a citizen of the State of New York, and that Jno. B. Cleveland is a citizen of the State
800 of South Carolina, but they deney that The Spartanburg and Asheville Railroad Company executed to them the mortgage mentioned and described in the original bill herein, and they further say that they are informed and believe that said mortgage was never duly executed by said company, & was never, prior to the filing of the said original, proved or registered, as required by law.

They deny that the present holders of said bonds are *bona fide* holders of the same; they also deny that the said company made default for six months in the payment of interest on any of said bonds, and say that they are informed and believe that the interest due on the 1st day of January, 1878, on the bonds held by the South Carolina Railroad Company was paid.

They deny that at the time the said original bill was filed the principle and interest of all of said bonds were due; and they

deny that the Spartanburg and Asheville Railroad Company
801 was insolvent on the first day of January, 1878; and they also deny that said company violated any contract contained in said alleged mortgage by neglecting and refusing to pay taxes & assessments upon the premises, franchises, and property of said company for the year 1878, and aver that they [knew] nothing of such default.

These defendants, further answering, say that at the time of the filing of the original bill, the plaintiffs had no right to ask for a foreclosure of said alleged mortgage.

They further say that they finished their work on said company's road and filed their notice of lien in the office of the clerk of the superior court of Polk county, before the registration of said alleged mortgage, & began suit in said Polk county to enforce said lien before said alleged mortgage was registered, and that they did the work under their contract with said company with the knowledge and consent of most, if not all, of the holders of said bonds;
802 that the work done by these defendants was of a permanent character, and added greatly to the permanent value of the property of said defendant company.

They further say that the charter under which the Greenville and French Broad Railroad Company [was] organized was passed by the General Assembly of North Carolina, at its session of 1871–72, and ratified the 15th day of January, 1872, and deny that said company organized under the charter passed in 1854–55, as alleged in the bill of complaint.

The- submit that the plaintiffs have not, by their said amended bill, entitled themselves to any equitable relief as against them; and they accordingly claim the benefit of the same objections to the said amended bill which are made by its said answer to the said original bill.

J. H. MERRIMON,
Sol. for J. E. Fry and J. A. Deal,
Partners under the name & style of Fry & Deal.

803 In the Circuit Court of the U. S. for the West. Dist. of N. C.

The answer of the board of commissioners of Buncombe county, one of the defendants to the amended bill of complaint of V. A. Tommey and The Atlanta Rolling Mills Company.

This defendant now, and at all times hereafter, reserving all manner of benefit and advantage to itself of exception to the many errors and insufficiencies in said amended bill contained for answer thereto or unto so much or such parts thereof as the defendant is advised is material for it to make answer unto: The said board of commissioners answers and says:

The said board adopts and reanswers the denials contained in its answer to the original bill herein, and adopts all the allegations and statements of facts contained in said answer, and hereby incorporates said answer into and makes it a part of this answer. And further answering, says: The said board admits that

William H. Inman is a citizen of the State of New York, and
804 that Jno. B. Cleveland is a citizen of the State of South Carolina; but said board denies that the Spartanburg and Asheville Railroad Company made and executed to them a mortgage, as alleged in said original bill. This defendant says that the alleged mortgage was not authorized by said company, and that it was not executed according to the charter of said company, nor according to the laws of the State of South Carolina, nor according to the laws of the State of North Carolina. This defendant further says that said alleged mortgage was never delivered by said company, and was never acknowledged and proved according to law, and was never registered.

This defendant, further answering, says that by the charter of said railroad company it is provided, "That the president and directors shall have power to call for all installments, declare all dividends of profits, make all contracts and agreements in behalf of the company, and to do and perform all other lawful acts and deeds which by the laws of the corporation they may be authorized and required to do and perform, and the acts and contracts of said
805 board, authenticated by the signatures of the president and secretary, shall be binding without seal;" that by the by-laws of said company it is provided, that all contrcts shall be made under authority of the board of directors of the company; that the president of the company, D. R. Duncan, without the authority of said board of directors, and in violation of the charter & by-laws of said company, undertook to borrow money for said company at usurious rates of interest, and to pledge the bonds of said company to secure the payment of the money so borrowed; that the said D. R. Duncan, assuming to act for said company, but without authority of said board of directors, and in violation of the charter & by-laws of the company, borrowed from the plaintiff, W. H. Inman, about fifty-nine thousand dollars at usurious rates of interest, & undertook to secure the same by attempting to pledge to said Inman about two hundred and thirteen thousand dollars of the bonds of said company; that said Duncan, without any authority whatever so
806 to do, borrowed from the Spartanburg, Union & Columbia Railroad Company, at various times, considerable sums of money at usurious rates of interest, and attempted to pledge with said last named company about two hundred and twenty-four thousand dollars of the bonds of the Spartanburg and Asheville Railroad Company to secure said sums of money; that said Duncan has, without authority of the board of directors of the Spartanburg & Asheville Railroad Company, and in violation of the charter & by-laws of said company, from time to time attempted to pledge the bonds of said company, & has put out of said company's possession in addition to the bonds heretofore mentioned, more than two hundred thousand dollars of said bonds; that none of the holders of said bonds are *bona fide* holders of the same, but all knew at the time they received said bonds from said Duncan he had no authority to dispose of them.

This defendant, further answering, says that said D. R. Duncan,

after this suit was brought, undertook to act for the Spartan-
807 burg & Asheville Railroad Company, and without waiting for the regular process of the court to be served upon said company, & without authority of the board of directors of said company, and in violation of the charter & by-laws of said [company], employed counsel and caused them to prepare a paper, which he pretended to be the answer of said company to the bill of complaint herein, in which said paper the said Duncan admitted the allegations contained in said bill of complaint, and did not attempt to make defence to said bill, although he knew that said company had a good defence. And this defendant further says that said Duncan has failed and refused to call a meeting of the board of directors of said company since the filing of the bill of complaint herein, although he has been requested to call said board together for the purpose of considering the defence which ought to be made to this suit.

This defendant, further answering, says that said Inman, the said Spartanburg, Union & Columbia Railroad Company, & the said Atlanta Rolling Mill Company had notice of the unauthorized acts of said Duncan; that said Jno. B. Cleveland had full notice that
808 said Duncan's acts were unauthorized.

This defendant, further answering, says that in August, 1876, at a general meeting of the stockholders of the Spartanburg and Asheville Railroad Company, it was resolved to mortgage the property of said company at the rate of ten thousand dollars per mile of said company's road; that at that time most [of] the present holders of the bonds of said company were present, or were represented by proxy, and it was then estimated that a mortgage of ten thousand dollars per mile would be necessary to complete said work, & it was then, and in several meetings of the stockholders & board of directors subsequent, understood that the bonds of said company should not be disposed of at less than eighty cents in the dollar; that any less figure for said bonds would be insufficient to complete said road, upon which the work had hardly more than been begun; that it was well known to the present holders of said bonds, and to William H. Inman and John B. Cleveland, that to dispose of said bonds at less than eighty cents in the dollar would result in the bankruptcy of the company, and stop the work upon the road at a point where it would be of little value.

809 This defendant, further answering, says that the county of Buncombe subscribed to the capital stock of the Spartanburg and Asheville Railroad Company upon the assurances made by said company that the road should be completed to Asheville, in said county of Buncombe; that with the bonds issued by said county of Buncombe in payment of its stock, the road was graded from near the town of Asheville, in said county, to the dividing line between Buncombe and Henderson counties, a distance of about eleven miles; that many of the holders of the bonds of said company were stockholders of said company, & members of its board of directors, and knew of the promises and assurances made by said company to the county of Buncombe, and knew that if the bonds of said company

were disposed of at less than eighty cents in the dollar said promises and assurances could not be fulfilled by said company.

This defendant further says that said Duncan disposed of nearly all of said bonds at less than fifty cents in the dollar.

810 This defendant, further answering, says it denies that said Spartanburg and Asherville R. R. Co. was insolvent on the first day of January, 1878, and denies that said company made default for six months in the payment of interest on the bonds of said company, but says that the interest claimed upon the bonds held by the South Carolina Railroad Company on January 1st, 1878, was paid, and that none of the other holders of said bonds were entitled to receive interest on said bonds, and were and are not *bona fide* holders of said bonds; & this defendant further denies that the principle and interest of said bonds were due at the time of the filing of the bill herein, and denies that any part of said principal or interest had been due for six months at said date; and this defendant denies that the said The Spartanburg & Asheville Railroad Company com-itted a breach of the covenants contained in the said alleged mortgage in neglecting and failing to pay taxes and assessments imposed upon the premises, franchises, and property of said company.

The defendant, further answering, says that the said board of commissioners of Buncombe county was not informed of the transac-

811 tions of said D. R. Duncan, president of the S. & A. R. R. Co., with the alleged mortgage bonds of said company, and never sanctioned said transactions in any manner whatever; and is informed and believes that none of the principal stockholders of said company knew anything of said Duncan's transactions with said alleged mortgage bonds, and that none of said stockholders were in any manner *ra*tified [of] said dealings; and is informed and believes that the board of directors of the company knew nothing of said Duncan's transactions with said alleged mortgage bonds, and never in any manner ratified said transactions.

This defendant, further answering, says that the said trustees, as this defendant is advised & believes have never been requested by the South Carolina Railroad Company to take steps to foreclose the said alleged mortgage.

Further answering, says that at the meeting in August, 1876, of the stockholders of the Spartanburg and Asheville Railroad Company, at which the resolution was passed authorizing the board of directors of said company to issue mortgage bonds of the company, the resolution was opposed in the meeting, and it was then stated by the opponents of said resolution that it would be danger-

812 ous to put a mortgage upon the road at that time, for the reason that the building of the road was only just then fairly begun; that the bonds would not command par, and they would be gotten hold of by speculators who would hasten a foreclosure of the mortgage, and thus render the stock of the company worthless & delay the building of the road; that to this argument it was answered by D. R. Duncan, president of the company, that he would guarantee that no steps should be taken to foreclose the mortgage until the road was completed to Asheville, that R. Y. McAden was

in said meeting of stockholders, and as president of the Spartanburg, Union & Columbia Railroad Company, and representing the stock of said company in said meeting, declared he would sustain said Duncan in his said statement, and urged that the mortgage should be placed upon the road; that W. H. Inman was in said meeting of stockholders and heard the declaration made by said Duncan and McAden; that it was upon the faith of such assurances that said stockholders voted for the resolution authorizing a mortgage.

Further answering, says that the said Greenville and French
813 Board Railroad Company was never organized until some time in the year 1873 or 1874, and was then organized under acts of the General Assembly of North Carolina, passed subsequent to the adoption of the constitution of North Carolina of 1868.

This defendant submits that the plaintiffs have not by their said amended bill entitled themselves to any equitable relief as against the Spartanburg & Asheville Railroad Company, or as against this defendant; and this defendant accordingly claims the benefit of the same objections to the said amended bill, which are made by its answer to the said original.

[SEAL.] J. E. RANKIN,
Ch'm'n B'd Com'rs, Buncombe Co. N. C.
J. R. PATTERSON,
Reg. of Deeds for Buncombe County & ex-officio Cl'k of Board of Com's.

814 In the Circuit Court of the U. S. for the Western Dist. of N. C.

The separate answer of E. Clayton, one of the defendants, to the amended bill of complaint of V. R. Tommey and the Atlanta Rolling Mill Co.

This defendant, now and at all times hereafter reserving all manner of benefit and advantage to himself of exception to the many errors and insufficiencies in said amended bill contained, for answer thereto, or unto so much or such parts thereof as the defendant is advised is material for him to make answer unto, he answers and says:

He adop-s and re-answers the denials contained in his answer and amended answer to the original bill herein, and adopts all the allegations and statements of fact contained in his said answer and amended answe., and hereby incorporates said answer and amended answer into and makes them a part of this answer.

815 He admits that William H. Inman is a citizen of the State of New York, and that John B. Cleveland is a citizen of the State of South Carolina; but he denies that the Spartanburg and Asheville Railroad Company executed to them the mortgage mentioned and described in the said original bill of complaint, and he says that said alleged mortgage was not proved and registered, as required by law, as he is advised and believes.

He denies that said The Spartanburg and Asheville Railroad Company made default in the payment of interest upon the bonds of said company, and avers that he is informed and believes that

the interest claimed by the South Carolina Railroad Company on the 1st day of January, 1878, was paid out of the means of the S. & A. R. R. Co. by —.

He denies that there has been default by said company for six months prior to the filing of the original bill herein in the payment of interest on said bonds, and he denies that at the time the said original bill was filed the whole of the principle and
816 interest of said alleged bonds was due.

He denies that at the time of the filing of said bill any part of the interest on said bonds, or on any one of them, had been due for six months.

He also denies that said Spartanburg and Asheville R. R. Co. was insolvent on the 1st day of January, 1878. He also denies that said company violated any covenant contained in said alleged mortgage by neglecting or refusing to pay the taxes and assessments upon the premises, franchises, and property of said company for the year 1878, and says he has no knowledge of such neglect or refusal.

And this defendant, further answering, says that he admits he was a stockholder in the said Spartanburg and Asheville Railroad Company in August, 1876, and that at that time he learned it had been resolved in a general meeting of the stockholders of said company to put a mortgage upon said company's road, property, and franchises; but he denies that he voted for said mortgage, and
817 says that he never saw said mortgage prior to the time this suit was begun, and knew nothing of its contents; he also admits that some time in the year 1877 or 1878, and after he had finished his contract upon said company's road, he received from said company bonds of said company to the amount of twenty-five hundred dollars in payment by said company for mules, carts, &c., sold by this defendant to said company, and that said bonds made reference to a mortgage; that he took said bonds at 80 cents in the dollar.

This defendant, further answering, says that prior to August, 1876, and during the years 1874 and 1875, he entered into contract with the Spartanburg and Asheville Railroad Company by which he was to grade so much of said company's road on what was known as the South Carolina division of said road, and so much on the Pacolet division of said road; that said contracts were for definite and prescribed portions of said company's road, as shown by said contracts, which have already been put in evidence in this
818 cause; that by said contracts the defendant became and was entitled and bound to grade so much of said company's road as was embraced in the terms of said contracts, and at the prices agreed upon for said work, all of which will appear from the testimony now on file in this cause. That by virtue of his said contracts, as he is advised and believes, he acquired a first lien upon the property, rights, and franchises of said The Spartanburg and Asheville Railroad Company as against any and all persons or corporations claiming a lien by virtue of any mortgage or deed of trust of said company upon the property, rights, and franchises of said company subsequent in date to this defendant's contracts; that this defendant

has such first lien by virtue of the proviso to section three of chapter 131 of the Public Laws of North Carolina of 1872–1873. That no provision was made by said S. & A. R. R. Co. at the time of the execution of said alleged mortgage to pay or secure this defend-
819 ant's contract and debt, nor has any such provision ever been made by said company.

This defendant, further answering, says that the said William H. Inman and Jno. B. Cleveland, both had notice of this defendant's contracts at and before the time at which it was resolved by the stockholders of said company to mortgage said company's property, &c.; and the said William H. Inman, being a member of the board of directors of said company, consented to said contracts, as defendant is informed and believes; and this defendant, further answering, says that he is advised and believes that most of the present holders of the bonds of said company knew of this defendant's contracts with said company and consented to the same.

This defendant, further answering, says that he fulfilled his contracts with said company, and complied with them in every particular; that by his labor, and the expenditure of his own money, & other means, he greatly increased the permanent value of the
820 property of said company; that nearly all the work done by this defendant on the road of said company was of a permanent character, such as grading.

This defendant, further answering, says that he denies that the present holders of the bonds of said company are *bona fide* thereof; but avers that they obtained said bonds from D. R. Duncan, president of said company, who, as the defendant believes, had no authority to dispose of the same, but who did dispose of them without authority and in violation of the charter and by-laws of said company, and this with the knowledge of said holders of said bonds.

This defendant further says that after his said work on said road was all completed, the said Spartanburg and Asheville Railroad Company still had abundant means to pay this defendant for said work, according to his said contracts with said company, but that said president of said company, as defendant is informed and believes, without the authority of the board of directors of said
821 company, and in violation of the charter and by-laws of said company, agreed with the Spartanburg, Union and Columbia Railroad Company to deliver the said S., U. & C. R. R. Company about one hundred and forty-two thousand dollars of the bonds of said S. & A. R. R. Company for a loan of about seventy thousand dollars, and agreed further with said S., U. & C. R. R. Company that none of the seventy thousand dollars be applied to the payment of this defendant's debt against said S. & A. R. R. Company, but should be applied to the payment of contractors for work done on said road after said loan was made, and the purchase of cross-ties and iron for railroad; that the said S., U. & C. R. R. Company knew that said Duncan had no authority to make such contract, and knew of this defendant's claim against said S. & A. R. R. Co.; that said Duncan, president of the S. & A. R. R. Co., was, at the time he borrowed said

seventy thousand dollars, a director in the said S., U. & C. R. R. Company.

822 This defendant submits that the plaintiffs have not by their amended bill entitled themselves to any equitable relief as against him; and he accordingly claims the benefit of the same objections to the said amended bill which are made by his said answer to the said original bill.

E. CLAYTON.

J. H. MERRIMON,
Sol. for Clayton.

STATE OF NORTH CAROLINA, *Buncombe County:*

E. Clayton, being duly sworn, says that the facts set forth in the foregoing answer as of his own knowledge are true, and as to the rest he believes the said answer to be true.

E. CLAYTON.

Sworn to & subscribed before me, this 26th day of January, 1880.
[SEAL.] E. W. H.,
By WM. R. WHITSON, *D. C.*

823 And on another day, to wit, February 3rd, 1880, the answer of R. L. Coleman & S. M. Rice, partners under the name and style of Rice and Coleman, is filed in said court, which said answer is in words and figures following, to wit:

824 In the Circuit Court of the United States for the West. Dist. of N. C.

The separate answer of S. M. Rice & R. L. Coleman, partners under the name & style of Rice & Coleman, two of the defendants to the amended bill of complaint of V. R. Tommey and the Atlanta Rolling Mill Company.

These defendants now, and at all times hereafter, reserving all manner of benefit and advantage to themselves of exception to the manny errors and insufficiencies in said amended bill contained for answer thereto, or unto so much or such parts thereof as these defendants are advised is material for them to make answer unto, they answer and say:

The- adopt and reanswer the denials contained in their answer and amended answer to the original bill herein, and adopt all the allegations and statements of facts contained in the said answer and amended answer, and they hereby incorporate said answer and amended answer into and make them a part of this answer.

They admit the citizenship of Wm. H. Inman and John B. Cleveland, as alleged in the amended bill, but they deny that the Spartanburg & Asheville Railroad Company executed to them the mort-
825 gage described in the said original bill, and they say said alleged mortgage was not proved and registered as required by law, as they are informed and believe, and that it was not lawful to register it, were it otherwise free from objection, until the debts

and contracts of said company, prior to or at the time of its execution, were paid or secured, as provided by Sec. 3, Chap. 131, of the laws of North Carolina, passed at the session of the General Assembly of 1872–'73, and that said debt and contract of said company, to & with these defendants heretofore in their said answer, & hereinafter mentioned by them, & also other debts & contracts of said company existed at and prior to the time of said execution of said alleged mortgage, and were not paid or secured before the registration (if yet made) thereof, and are not yet paid off nor secured, & that said alleged mortgage deed was & and is consequently invalid & inoperative against these defendants, and other injured creditors and contractors.

These defendants further answer and say that on or about the first day of April, 1876, they contracted with the Spartanburg & Asheville Railroad Company to grade the entire section of their road from Green river to Butt Mountain, a distance of about five
826 miles, and to do the construction work on said section, stipulated in said contract at the price stipulated therein; that the said contract (being the original agreement, as shortly after modified in accordance therewith, and with the right of said company therefor and by consent of parties) was for the performance by them of the said grading and work for the whole of the said section between the said points, and the payment therefor by said company in the manner and for the prices stipulated as an entirety; and the said contract was an entire contract, binding and obligatory upon both the said company and these defendants, the parties thereto.

That with the view and for the purpose of completing the said grading and work in accordance with their said contract, these defendants at once, and prior to October, 1876, made large investments in mules, carts, and other things necessary to the successful prosecution of the said work; and in making such investments, as well as in fixing the prices at which they would do the said work, they were greatly influenced by a consideration of the amount of work to be done.

That said contract has already been put in evidence in this
827 cause, and is hereby referred to as a part of the answer.

These defendants, further answering, say that in accordance with said contract they diligently and faithfully prosecuted the said grading and work continuously from the first day of June, 1876, until the first day of May, 1878, when they completed the same according to their said contract, which they fully performed on their part, and by virtue of the said contract and said performance thereof they acquired a first lien upon the property, rights, and franchises of the said The Spartanburg and Asheville Railroad Company, as against any and all persons or corporations claiming a lien by virtue of any mortgage or deed of trust of said company subsequent, or registered subsequently, to the date of the contract aforesaid; that these defendants have and claim such prior lien by virtue of chap. 131 of the Public Laws of North Carolina of 1872–3; that at the time of the execution of the alleged mortgage in October, 1876, the contracts aforesaid were still in full force and mutually

binding on all the parties thereto, and yet no provision was
828 made by the said Spartanburg & Asheville Railroad Company to pay or secure these defendants' said contract and debt, nor has such provision ever been made by the said company.

These defendants, further answering, say that the plaintiffs, W. H. Inman and John B. Cleveland, both had notice of their said contracts with the said company, and its liability thereon, at and before the time of the pretended execution of said alleged mortgage, and, as these defendants are informed and believe, most of the holders of the bonds of the said company, including the plaintiffs, knew of said contracts and consented to the same.

These defendants further say that the plaintiffs, W. H. Inman and John B. Cleveland, and also R. Y. McAden and other holders of said bonds, well knew that these defendants were prosecuting their work of grading and preparing the said company's road, in accordance with their said contract as aforesaid, continuously from April, 1876, to May, 1878, while said work was going on, and all the plaintiffs were aware of facts sufficient to put them on notice of the said work being done by the defendants while it was going on, and that the said company was indebted and liable to them therefor,
829 and for the work that might be done under said contract, and that they had such knowledge, after the company's means for paying for said work were exhausted, except by the means of the proceeds of said mortgage bonds, and that they were so exhausted, and this while said work was being done by said defendants, and no one of said parties raised any objection to the performance and completion of the said grading and work between the points aforesaid.

Defendants, further answering, say that said grading and work was of a permanent nature, and added a large permanent value to the said property of the said company.

These defendants, further answering, say that they deny that the present holders of the alleged bonds of the said company are *bona fide* holders thereof; that, as these defendants are informed and believe, said holders obtained said bonds from D. R. Duncan, president of said company, who disposed of them, as these defendants are informed and believe, without lawful authority, and this with the knowledge, or notice equivalent thereto, of said
830 holders, including the plaintiff holders of said bonds.

These defendants, further answering, say that they never voted to authorize the board of directors of said company to place a mortgage on said road or property, or to make or represent such mortgage as a lien thereon, and they never received any part of the proceeds of the sale of the said alleged bonds; and that they never represented that said alleged bonds were a first lien on said property of said company.

The defendants further say that on the 14th day of June, 1878, and prior to the bringing of this suit, they duly filed notice of lien on the property of ——— in the supreme court clerk's office, of Henderson county, North Carolina, as set forth in the transcript thereof, hereinafter mentioned, and thereby commenced a proceed-

ing under the laws of North Carolina to enforce against said company their said lien, which they claim under and by virtue of the law concerning "Liens of Mechanics and others" set forth in Battle's Revisal, Chap. 65, and all the laws of said State thereupon; that in pursuance of said law they continued
831 said proceeding to enforce said lien in said superior court of Henderson county by issuing a summons to and bringing suit against the said The Spartanburg & Asheville Railroad Company within six months from the filing of the said notice of lien, said process being returnable to the spring term, 1879, of the said court, and at said term, the said company then being duly in court, and failing to answer the complaint theretofore duly filed by these defendants, the plaintiffs in said suit, the court duly adjudged that these defendants recover their said debt, to wit, said sum of twenty-two thousand nine hundred and thirty-five and $\frac{23}{100}$ dollars claimed in said proceedings and costs; and that they are entitled to and have a lien on the road, road-bed, franchises and property of the said company in the terms and to the extent in said adjudication expressed, and rendered judgment accordingly and with regard to process to enforce the same; that a transcript of said notice and judgment and all said proceedings has heretofore been exhib-
832 ited & filed in evidence in this cause, and reference is made thereto for particulars thereof. (Said proceedings, record, and transcript not being now present nor accessible to these defendants or their counsel.)

These defendants insist that by virtue of the notice of lien and proceedings and judgment aforesaid the said superior court first acquired jurisdiction of the subject-matter of this suit, so far, at least, as these defendants are concerned, and they insist that this honorable court will not interfere with said proceedings and adjudication of the said superior court, or take or exercise any jurisdiction derogatory thereto.

These defendants deny that the lands owned by them between Green river and Butt Mountain, over which they graded defendant company's road, were purchased by them long after they, as contractors, did said grading; but, on the contrary, these defendants allege that they purchased said lands before said grading was completed, and the said McMinn tract before doing any grading or other work thereon under said contract.

833 They further say said lands were purchased by them simply as an investment, and not with a view to their claims against said company.

They deny that they entered upon their contract with full knowledge of said alleged mortgage, which they say did not then exist, and which, as they are informed and advised, was not properly registered up to the time of the completion of their said work, as aforesaid, about the 1st May, 1876, nor for several months thereafter, and was therefore subsequent in time of lien, if any lien was ever created thereby, to the purchase of said lands by these defendants, to wit, said "McMinn tract," on September 6th, 1877; said "Speculation tract," on February 6th, 1878, and "Swain tract," April 13th, 1878,

as appears by the deed for said "McMinn tract," and the contracts for title to the other two tracts filed in evidence.

These defendants deny that no notice was given the plaintiffs, or any other of the holders of said bonds, of any claim or interest in or lien upon any portion of said company's road or property
834 of these defendants. They say that from the time of their said purchase of said lands they made no secret thereof, and the same was well known to the said company, and to R. Y. McAden, president of the Spartanburg & Union Railroad Company, and thus to said company, and to other bondholders, while said work of these defendants was uncompleted and in progress, and to other holders of said bonds; and if it was not known to any of the plaintiffs or other bondholders, it was not from any design or fault of these defendants. In this connection these defendants refer to their statement in their former amended answer (incorporated with this answer) as to the assurances made them by Mr. R. Y. McAden and agreement with him, acting for the road, as to the terms upon which these defendants agreed that the iron should be laid on said portions of the road over their land, which was not to prejudice the rights of the company or of these defendants, who were at said time in pos-
835 session of said portion of road over said land, and the said land itself over which it extended, adversely to said company; and by said agreement, and in consequence of such assurances, agreed to permit said company to enter and lay the track with iron.

They here correct (on subsequent information) their mistaken designation of R. Y. McAden as one of the directors of the S. & A. R. R. Company, but they aver that he was allowed by said company to assume, and did assume, large control over the management and property of said company, and to such an extent as to have the appearance and induce reasonable belief that he was authorized to act for said company in said transaction, and these defendants made said agreement with said company, as they regarded, it under that belief.

These defendants, further answering, deny that prior to their purchase of their land over which said road extends they performed their said work on said property as the property of the Spar-
836 tanburg and Asheville Railroad Company, or that very recently (before the filing of plaintiff's bill) they wrongfully or fraudulently or for a trifling consideration procured, or claimed to have procured, title to portions of said roadway, or that they purchased said land from the causes or with motives or designs charged upon them in said bill of plaintiffs in this cause. On the contrary, they aver that they gave, as they are informed and believe, a full and fair price for said lands, and purchased from the motives hereinbefore stated, to wit, as an investment, &c.; that there was no agreement as to the party or parties in whom the title or ownership of said property should be considered to be; that there was no further agreement between them and the said company as to the performance of said work than was contained in the contract itself aforementioned and in evidence.

These defendants having fully answered the said amended bill of the plaintiffs, so far as they are advised it is necessary and
837 material for them to answer, pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

M. E. CARTER,
D. COLEMAN,
Sol's for Defend'ts.

And afterwards, to wit, March 9th, 1880, the complainants, by their solicitors, filed their replication to the answers of the said defendants; which said replication is in words and figures as follows, to wit:

838 Circuit Court of the United States, Western District of North Carolina. 1st Monday in Feb'y, 1880, at Charlotte.

V. R. TOMMY *et al.*

vs.

THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY *et al.*

These plaintiffs, saving and reserving to themselves all and all manner of advantage of exceptions to the manifold insufficiencies of the amended answers of the defendants, S. M. Rice and R. L. Coleman, partners under the name & style of Rice and Coleman, E. Clayton, the board of commissioners of Buncomb- county, J. E. Fry and J. A. Deal, partners under the name and style of Fry & Deal, John Garrison, and all others except the amended answer of the Spartanburg and Asheville R. R. Company, for replication thereto, say that they will aver and prove the said amended bill to be true, concise, and sufficient in law to be answered unto, and that
839 said amended answers of said defendants are untrue, uncertain, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in said amended answer contained material or effectual in law to be replied unto, confessed, and avoided, traversed or denied, is true; and which matter and thing these repliants are ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

W. P. BYNUM,
W. S. THOMPSON,
Sol's for Pl'ff's.

And afterwards, to wit, June 12th, 1880, A. Burwell, special master, files in our said court a supplemental report in words and figures as follows, to wit:

840 *Supplemental Report of A. Burwell, Special Master.*

In the Circuit Court of the United States for the Western District of North Carolina. In Equity.

V. R. TOMMEY *et al.*
against
THE SPARTANBURG AND ASHEVILLE R. R. CO. *et al.*

Since the last term of this court, and according to an order then made, the bill has been amended, and the trustees in the mortgage made to secure the bondholders of the Spartanburg and Asheville R. R. Co. have become parties complainant. The defendants have also filed amended answers.

In said order leave was given "for any party to introduce new testimony, and to have a supplemental report thereon.

I gave notice to the parties that I would hear such testimony as the- wished to introduce at Hendersonville, N. C., on May
841 25th; at Spartanburg, S. C. on May 26th, and at Charlotte, N. C. on May 27th, 1880.

At Charlotte some of the parties appeared, but some evidence was taken at Hendersonville and at Spartanburg on the days named, all of which is herewith submitted.

In the amended bill the allegation is made by the trustees, complainants, "that the defendant railroad company, prior thereto and up to the filing of said bill, had committed a further breach of the covenants contained in said mortgage, in this, that the said railroad company had neglected and failed to pay, or cause to be paid, any and all the taxes levied and assessments imposed upon the premises, franchises, and property so mortgaged, to wit, for the year 1878, by the State and county authorities in the county of Spartanburg, South Carolina, and the counties of Polk and Henderson, in
842 North Corolina, the same having been levied, assessed, and imposed in the due course of law, and justly due and owing, to wit, the sum of $——."

Only one witness was introduced before me, who testified in regard to the non-payment of taxes assessed on the property of the defendant railroad company, and that witness (Mr. John H. Blasengame,) stated that he was, and had been, since the year 1877, the tax collector of Spartanburg county, South Carolina; that in the year 1877 the tax for said county assessed against the S. & A. R. R. Co. amounted to $816.85, and, the tax not being paid, a penalty of $142.94 was also assessed against the company on Nov. 1st, 1878; that the first installment of the tax ($\frac{1}{2}$) was due on May 1st, 1878; and the second installment ($\frac{1}{2}$) was due on Oct 1st, 1878, and that no part of this tax has been paid.

843 There was no evidence of the non-payment of taxes in the counties of Polk and Henderson, North Carolina.

I therefore find and report that the defendant railroad company had neglected and failed "to pay all taxes levied and assessments imposed upon the premises, franchises, and property described in the mortgage;" and that because of such neglect and failure, and

according to the conditions of the mortgage, the said trustees were at the date of the filing of the bill entitled to take possession of all the property of the S. & A. R. R. Co.

No testimony was introduced before me in regard to the failure of the Spartansburg & A. R. R. Co. to pay the coupons of first mortgage bonds at maturity. I therefore refer to my former report as containing a statement of the facts found by me upon that matter.

844 Two of the directors of the S. & A. R. R. Co. were examined before me since my last report, and their testimony is herewith submitted. It relates principally to the issuing of the mortgage bonds of the company, and to the authority given to the president of the company to hypothicate those bonds.

The chairman of the Board of Commissioners of Buncombe county, N. C., testified that his county was a stockholder in the company to the amount of $100,000.00; that the county was represented in the stockholders' meetings of '76, '77, and '78; that he represented the county in the meeting of 1878, and heard the president read his report, in which was given a full statement of the disposition made by him of the mortgage bonds; that he did not in any way signify his disapproval of the reported hypothication of the bonds.

845 I refer to my former report as showing my finding upon the question concerning the authority of the president to sell or hypothicate the mortgage bonds.

Jno. Garrison, a creditor who has filed a lien on the property of the company in Polk county, appeared before me and testified that he furnished all the material for the Vaughn creek trestle, and also for the Mill creek trestle; that he cut the timber, sawed it at his own mill, and hauled it to the spot where the trestles were erected.

He further states that since he first testified in this case, he had refreshed his memory by reference to his books, and that he could say that he completed the work on the Mill creek trestle on Feb'y 17th, 1878. On his former examination he had been unable

846 to fix the exact date of the completion of the work on the last named trestle, and I so reported. I now find and report that he finished that work on the 17th day of February, 1878.

It was proved before me by Mr. R. L. Coleman, of the firm of S. M. Rice & R. L. Coleman, partners under the name & style of Rice & Coleman, "that neither of that firm were advised, until after this bill was filed, that they, as creditors of the defendant corporation, had a lien on the franchise and property of the company by virtue of the statute law of North Carolina, (Battle's Revisal, chap. 26,) giving a lien a preference of payment to creditors who were such at the time of the execution or registration of a mortgage of such property," and I find that said firm were, at the time of the beginning of this suit, ignorant of their alleged right under that statute.

Mr. W. H. Inman put in evidence the papers marked Exhibit "O" and "P," which are filed, and President Duncan ad-

847 mitted that his signature on said papers were genuine.

Only one additional claim has been proved since my last

report, to wit, an account due M. P. Renland & Long, for *cupplins*, $93.56, and interest from May 1st, 1878, amounting to $101.93. He has no lien on the property of the company.

It was proved before me that there had been no meeting of the directors or stockholders of the S. & A. R. R. Co. since the beginning of this suit, and that the answers filed in this cause as the answer of the S. & A. R. R. Co. have been made by the president of the company, without any action of either the stockholders or directors.

In my former report, I omitted to state that the creditors, S. M. Rice & R. L. Coleman, partners under the name & style of Rice & Coleman, had filed in the superior court of Henderson county a "mechanics' lien" on the property of the defendant corporation in said county; a transcript of the record of that court in
848 the case of said firm against the S. & A. R. R. Co. is filed, and from that record the following facts appear: That S. M. Rice & R. L. Coleman, partners under the name & style of Rice & Coleman, completed their work on April 15th, 1878; that the lien was filed in the office of the clerk of the superior court of Henderson county on June 14th, 1878; that on November 4th, 1878, a summons was issued out of said court, commanding the sheriff of Buncombe county to summons the S. & A. R. R. Co. to appear at the next term of the superior court of Henderson county, to be held on the 5th Monday after the 4th Monday in April, 1879, to answer the complaint of S. M. Rice & R. L. Coleman, partners under the name & style of Rice & Coleman; that on November 11th, 1878, J. P Sawyer, one of the directors of the defendant corporation, made the following endorsement on said summons to wit: "Service acknowledged at Asheville, North Carolina, November
849 11th, 1878, James P. Sawyer, one of the directors of the S. & A. R. R. Co." That said plaintiffs filed their complaint at Spring term, 1879, of said court; that the defendant corporation did not appear in said court, and during the term of the court there was a judgment rendered in favor of S. M. Rice & R. L. Coleman, partners under the name & style of Rice and Coleman, against the S. & A. R. R. Co. for the sum of $24,495 and cost, and it was further adjudged by that court that the plaintiffs (S. M. Rice & R. L. Coleman, partners under the name & style of Rice & Coleman) were entitled to and had a lien on the defendant railroad for the payment of said sum; and, also, that the plaintiffs have leave at any time to take out an appropriate execution to sell the defendants' said railroad, &c.

S. M. Rice & R. L. Coleman, partners under the name & style of Rice & Coleman, were contractors, and the work they did for the company was grading, culvert building, &c., and in their
850 notice filed by them in the office of the clerk of the superior court of Henderson county, they claimed a lien on that part of the railroad "between Green river and Butt Mountain Gap."

I find that S. M. Rice & R. L. Coleman, partners under the name & style of Rice & Coleman, did not acquire any lien on the property

of the defendant corporation by virtue of said proceedings and the judgment in the superior court of Henderson county.

Respectfully submitted.

A. BURWELL,
Special Master.

And on the said day and year, to wit, June 12th, 1880, A. Burwell, special master, files in our said court, with his said supplemental report, the testimony of James P. Sawyer, G. W. Fletcher, J. E. Rankin, John Garrison, R. L. Coleman, and D. R. Duncan, which said testimony is in the words and figures as follows, to wit:

851 Circuit Court of the United States, Western District of North Carolina.

V. R. TOMMY *et al. vs.* THE S. & A. RAILROAD CO. *et al.*

At Hendersonville, N. C., pursuant to a notice given to the parties, I proceeded on May 25, 1880, to hear further testimony in the above cause, under the order made at December term, 1879.

Present: W. H. Inman, R. Y. McAden, J. H. Merriman, attorney, D. Coleman, and John Garrison.

Then and there JAMES P. SAWYER, a witness introduced by Mr. Merriman, deposes and says af follows:

I was elected a director at the annual meeting in 1877, and have been such ever since. I attended the meetings of 1877, and two meetings at Spartanburg, and two here at Hendersonville. No quorum at one meeting here. One meeting at Spartanburg was called to see if a settlement could be made with contractors; no quorum at the meeting in August, 1878. I attended a meeting here in September, 1878. I think I was present at all the meetings of the
852 directors after my election. I do not know that any authority was given Major Duncan, at any regular meeting of the board after my election, to dispose of the first mortgage bonds; he visited me at Asheville; I don't recollect at what time. After I was a director, in reference to a sale of some of the bonds, he informed me that it was necessary to have some work done at once, and that he had no money to pay for it, unless some of the bonds were sold, and asked me if I did not think that some of the bonds had best be sold even at fifty per cent. rather than stop the work. I asked him what amount of bonds it would be necessary to sell to do the work required. He left the impression on my mind that it would take only a small amount. I replied that if it was necessary to do the work, and the money could not be otherwise had, it would be best to sell the bonds at fifty per cent. to the amount needed. He told me what work it was needed on, but I don't now recollect it. I attended a meeting after that; I understood at that meeting that the
853 bonds had been sold, or hypothicated. This was on October 15th, 1878. I had heard of the sale or hypothecation of the bonds, but knew nothing of it until informed by Major Duncan and Mr. Blake at the meeting at Hendersonville, in September, 1878.

He gave me this information privately; I don't know that the information was communicated to the board officially. In September, 1878, at the time of the meeting of the board, the disposition made of the bonds was disapproved of by different members of the board privately. No meeting of the board since 1878 that I know of. I wrote to Major Duncan that it would be well to call a meeting; I had no reply. No meeting of the stockholders has been held since 1878, as far as I know. The board of directors, to my recollection, never authorized Major Duncan to employ Messrs. Bobo & Carlile as the attorneys of the company. I think Col. Coleman was the regular attorney of the company; I don't know that there was any consultation among the members of the board as to what defence should be made to this action, nor did the board take any steps to my knowledge. There was no meeting called for that pur-
854 pose to my knowledge. The board did not authorize Major Duncan to file the answer which was filed, or any other answer; no authority has been given Major Duncan to file the amended answer; no meeting of the board has been held.

Examined by Major DUNCAN:

I did not see the president of the company often. When I did see him he would answer any question I asked him about the business of the company. The letter to Major Duncan was written abont January or February, 1880, and was signed by Gen'l Vance and myself. The letter was about the suits brought by the contractors, I think. It was short. The president employed Col. Coleman as attorney. I heard the president say that Col. Coleman was the attorney of the company.

Examined by Mr. MCADEN:

I was present at the annual meeting in 1877. I heard part of the reports of the officers read to that meeting. I think I heard the president read his. In that report he stated that in order to carry on the work he had hypothicated some of the mortgage bonds
855 to A. R. Mill Company and others, at fifty per cent. I recollect hearing that distinctly. I was out of the meeting a few minutes. I think that I did not hear a part of the treasurer's report. The reports were approved. After the reading of the reports Major Duncan addressed the meeting, and urged the stockholders to subscribe for the bonds at eighty per cent., and said that as far as he was concerned, he would resign before he would sell the bonds for less than eighty. He stated that he had no means to carry on the work but the mortgage bonds. Major Duncan was then re-elected by the stockholders a director, and then, by the directors, he he was unanimously elected president. No dissent was made to his action as to the bonds, as I recollect, neither at the stockholders' or directors' meeting. The directors did not furnish the president any means to carry on the work, except the mortgage bonds. The next meeting I attended was at Spartanburg, in July, 1878. The object of the meeting was to confess judgment to the contractors. The object of the proposed confession of judgment was to give the contract-

ors precedent over all the other creditors. I don't recollect that Major Duncan explained at that meeting the financial condi-
856 tion of the company. I was not in a condition to recollect all that occur-ed. I was at the stockholders' meeting, in September, 1878. The president then submitted a report of the financial condition of the company. I do not recollect what was in the report, but at that meeting I learned of the hypothecation of the bonds. No objection was made, as I recollect, by any stockholder, to the action of the president as reported. Gen'l Vance may have done so, but I can't say that any one expressed any disapprobation of the president's acts. Major Duncan was unanimously elected a director by the stockholders, and was then, by the directors, unanimously elected president. I voted for him for director and president. At the directors' meeting, September, 1878, not one word was said by any director in disappooval of the acts of the president as reported by him to the stockholders. Since I have been a director the board has never disapproved of the acts of the president, nor did any member of the board ever express any disapproval.

Examined by Mr. MERRIMAN:

857 In September, 1878, I was surprised that some disapprobation of the hypothecation of the bonds at fifty per cent. was not expressed at the meeting, as I had heard directors of the company express privately their disapproval of that disposition of these bonds. These expressions were made by older men than I, who had been directors for a longer time. Major Duncan's report was read and received. No resolution of approval was passed. I signed a paper authorizing a confession of judgment to contractors. Major Duncan said Gen'l Vance and others approved it, and had signed. No confession of judgment was made, as it was considered by a majority of the board that such action would interfere with the prosecution of the work, at the creditors' meeting in October, 1878. Dissatisfaction was expressed. Some directors were present.

Examined by Major COLEMAN:

No one ran against Major Duncan for president. There was no aspirant for the office, so far as I know, before Major Duncan's re-election in 1878. It was understood that the road was involved, and that the prospects of the company were gloomy. It
858 looked gloomy to the stockholders in 1877, and very much so in 1878, and that the creditors of the road to a large degree would loose money. The directors considered that as Major Duncan knew more about the road and the bonds, and best what to do with them, they had best keep him. I understood that the company was largely in debt in 1876, when Major Duncan was first elected.

(Signed) JAMES P. SAWYER.

859 G. W. FLETCHER, a witness introduced and examined by Mr. MERRIMAN, deposes and says:

I was a director of the S. & A. Railroad Company, and have been since the organization of the company. I was a director of the G.

and French Broad Company before the consolidation. I have attended all the meetings of the directors except one at Asheville prior to Major Duncan's election. The board of directors gave Major Duncan authority to sell the bonds at eighty per cent. or hypothecate them, as I recollect. I heard no figures mentioned except eighty, and the impression was made on my mind that they might be sold at that price. No other authority was given Major Duncan that I recollect. I first heard of the disposition of the bonds from Major Duncan at Spartanburg; my impression is that it was at the meeting called to arrange the debts of the company, but it may have been prior to that time; it may have been at the meeting in July, 1878. No action was taken by the board on this subject to my recollection.

Examined by Mr. McADEN:

The directors gave Major Duncan authority to mortgage the
860 road. I was at the stockholders' meeting, in 1876, that authorized the mortgage. The minute book shows all the authority given Major Duncan by the board.

Question. Did the board of directors authorize president Duncan, ——, in order to carry on the work on the road, to hypothicate or pledge the mortgage bonds?

Answer. To my recollection the minute book now in evidence, and now shown me, contains a record of all the authority given to the president in regard to the hypothication or pledge of the mortgage bonds.

Question. How is it, then, that you stated that the board of directors limited the sale of the bonds to eighty per cent., when there is no such record in the minute book?

Answer. There was a mutual understanding between the president and directors' that the bonds could be and would be sold at that price. No record was made of that understanding so far as I know.

Question. Was there not also a mutual understanding that the president should carry on the work as fast as possible, and in order to do so, that he should sell or hypothicate the mortgage bonds?

Answer. It was spoken of in the board of directors.

Question. Were not the directors very much scattered, the
861 meetings few, and were not the financial matters of the company entrusted to the president almost entirely?

Answer. Yes.

Question. Were you not at the directors' meeting in August, 1877?

Answer. Yes.

Question. Did not the president and treasurer read their reports to that meeting?

Answer. Yes.

Question. Did not the president in his report to that meeting state that he had bought iron from the Atlanta Rolling Mill Company, and to secure the payment had hypothicated bonds at fifty per cent.?

Answer. I do not recollect; if the report says so it must be so.

Ques. Did any one of the directors at that meeting disapprove of the president's action?

Ans. Not to my knowledge.

Ques. Were you at the stockholders' meeting in August, 1877, and were the reports of the president and treasurer read?

Answer. Yes.

Ques. Was any dissent to either of these reports made by any of the stockholders?

Ans. No.

Ques. Was not Major Duncan at that meeting unanimously elected director and president?

862 Ans. Yes.

Ques In the annual meeting in September, 1878, did not the president read his report to the directors and stockholders?

Ans. He did.

Ques. Did the directors or the stockholders at that meeting express any disapprobation of the president as reported by him?

Ans. Not publickly.

Ques. Did you never, while a director, make any enquiry of the president at the various directors' meetings, or anywhere els-, how he was raising money to carry on the work?

Ans. I do not recollect.

Ques. Did you ever hear, either at the directors' meeting or from the president elsewhere, how he was raising money to carry on the work?

Ans. I heard from his annual reports and from the newspapers, and may have heard from the president.

Ques. By what means did you heare he was raising money?

Ans. By selling county bonds and hypothicating first mortgage bonds of S. & A. Railroad Company.

Ques. When did you here this?

Ans. I do not recollect the dates, but all along during the construction of the work.

863 Ques. Did you hear the prices at which the bonds were sold or hypothicated; if so, what were they?

Ans. As to the county bonds, from fifty to sixty-five; I can't say with certainty. I heard at one of the meetings of the hypothication of the bonds for iron at fifty per cent., and heard no other prices named till the meeting at Spartanburg, when I heard that Major Duncan had pledged some bonds as low as twenty-nine cents.

Ques. Did you at any time, either at the directors' meeting or the stockholders' meeting, in any way censure the president for his conduct as to the bonds, or manifest any disapprobation of the same?

Ans. Not publickly.

Ques. Did you do so privately?

Ans. I did not make any objection to his conduct till I heard of the hypothication at twenty-nine.

Ques. Then you did not object either publicly or privately to his hypothication at fifty?

Ans. Not to my recollection.

Ques. Did you not, taking into consideration the prices then of bonds, consider the pledge of the bonds at fifty per cent. a reasonable hypothication?

Ans. I did.

864 Ques. Would you have loaned money on them at a hyer rate than fifty per cent.?

Ans. No.

Examined by Mr. MERRIMAN:

Ques. Was there an executive committee appointed by the board regularly?

Ans. Yes.

(Signed) GEORGE W. FLETCHER.

865 J. E. Rankin, at witness introduced and examined by Mr. Merriman, deposes and says: I live at Asheville, Buncombe county. I am one of the commissioners of that county; am chairman of the board, and have been since December, 1876. Buncombe county is a stockholder in the S. & A. Railroad Company to the extent of one hundred thousand dollars. The county paid for the stock in full with county bonds. The bonds were delivered to Major Duncan, or on his order. The county has been represented at the meetings; 1877 by Capt. Fagg, and in 1876 by Mr. Aston, and in 1878 by myself, as proxies of the county. The county as a stockholder, at the meeting of 1878, when I represented the county, did not give its sanction to the disposal of the mortgage bonds of the company. The board of commissioners of the county had no knowledge of the disposal of the bonds till September, 1878. No stockholders' meeting has been held since September, 1878.

Examined by MCADEN:

I heard the reading of the president's report at the meeting of September, 1878. I remember that that report gave a state-
866 ment in full of the hypothecation of the mortgage bonds. I did not protest against the hypothecation of the bonds, or in any way signify my disapproval. I did not consider it necessary for me to do so, as the bonds had been already hypothecated. I voted for Major Duncan as a director at that meeting, and after hearing his report.

Signed J. E. RANKIN.

867 John Garrison testifies in his own behalf, and says:

I finished the work on the Mill Creek trestle on the 17th day of February, 1878, and on the Vaughn Creek trestle on the 12th day of August, 1877. I furnished the material myself for each of these trestles. I owned a saw-mill; I cut the timber, hauled it, and sawed it. I was a mechanic; I superintended the work, and worked myself on the trestle, except on Vaughn Creek trestle. I continued to furnish material till the trestles were completed. In my former testimony I stated that I finished the Mill Creek trestle on the 10th or

12th of February, 1878. I have since that time refreshed my memory by reference to my books, and find that I finished it on the 17th day of February, 1878, as above stated.

(Signed) JOHN GARRISON.

868 R. L. COLEMAN, testifying in behalf of Rice & Coleman, deposes and says:

Ques. When did you receive the first information or advice that your firm, as creditors of the S. & A. Railroad Company, had a lien on the franchises and property of that company by virtue of the statute laws of North Carolina, giving such lien and preference of payment to creditors who were such at the time of the execution or registration of a mortgage of such property? State when, if at all, you, or either of your firm, received that information or advice, and what were you so informed and advised.

Answ'r. It was not till after this suit was begun. We were advised that there was a statute giving us, as creditors, a prior lien on property and franchises of the road. This advice was given us by our counsel. I am satisfied that Col. Rice did not know of this. I had never heard it spoken of before. I was advised that the lien spoken of was one in favor of the creditors of the corporation, who were such at the time of the execution and registration of the mortgage.

869 I do not recollect the particular words told me, but they refer-ed to the statute upon which our counsel now rely, as I understand.

Ques. State if you had a conversation with R. Y. McAden about the opposition of your firm to having the cars of the company run over your land.

Ans. There was a verbal understanding between our firm and Mr. McAden that we would not oppose the laying of the tract over our land, nor would we claim the iron laid thereon, but this concession on our part was in no wise to effect our legal rights.

(Signed) R. L. COLEMAN.

870 At Spartanburg, South Carolina, on May 26th, 1880, according to notice, I proceeded to hear further testimony in this case.

Present: W. H. Inman, D. R. Duncan, and R. Y. McAden.

W. H. Inman produced and filed the papers marked Exhibits O & P, and D. R. DUNCAN, being duly sworn, says:

The statement shown me, marked Exhibit O, is correct as to dates and amounts, and the signatures therein purporting to be mine and W. K. Blake's are genuine.

The statement shown me, marked Exhibit P (two sheets), is correct.

(Signed) D. R. DUNCAN.

871 JOHN H. BLASSINGAME, a witness introduced by Mr. McAden, being duly sworn, says:

I am now, and have been since 1877, the tax collector of Spar-

tanburg county, South Carolina. There was assessed for the year 1877 taxes against the S. & A. Railroad Company for the county of Spartanburg, South Carolina, eight hundred and sixteen dollars and eighty-five cents, and said taxes not being paid, a penalty of one hundred and forty-two $\frac{94}{100}$ dollars was assessed against the company on Monday, November 1st, 1878.

The first installment of this tax ($\frac{1}{2}$) was due May 1st, 1878, and the second installment was due October 1st, 1878. No part of this tax has ever been paid.

(Signed) J. H. BLASSINGAME.

872 And at another term of our said court, begun, opened, and held in the city of Charlotte, in and for the western district of North Carolina, on the second Monday in June, 1880, it being the 14th day of said month of June, the Hon. Hugh L. Bond, judge of the United States circuit court, being present, presiding, and holding said court:

When on the 16th day of said month of June, the said cause coming on to be heard upon the pleadings and report and supplemental report of special master, and exhibits and testimony taken and returned by said special master, after argument of counsel for complainants and defendants, his honor Judge Bond took the papers in the case, with the brief of Messrs. Bynum and Thompson, solicitors for complainants, and the briefs of Messrs. Jas. H. Merriman, —— Carter, and —— Coleman, solicitors for defendants, and
872½ withheld the judgment of the court, decree, to be filed at the next term of this court, viz., December term, 1880.

And on said 16th day of June, 1880, James Anderson, receiver, files in said court a general statement of his account, with his report to May 31st, 1880, which said report and statement are in words and figures following, viz:

873 OFFICE SPARTANBURG & ASHEVILLE R. R. S'P'T.,
May 31*st*, 1880.

To the Hon'l R. P. DICK, *Judge U. S. Circuit Court, Charlotte, N. C.*

SIR: In compliance with your order, I took charge as receiver of the property of the Spartanburg and Asheville R. Road Company, on the first day of November, 1878.

The road was at that time turned over to me by the president of the company in running order from the Junction of the Atlanta and Charlotte Air-line near Spartanburg, to a point near Coleman's Station, leaving fully eight miles to complete between that point and Hendersonville.

The material turned over available for this purpose was 73,662 superficial feet of tress*le* timber and two Wharton switches and frogs. Estimates were taken from several responsible contractors for the material and labor to complete the line to Hendersonville.

The contract for iron and fastenings was awarded to the Atlanta Rolling Mill Co., and for the superstructure and track laying to Capt. W. A. Potts, of Atlanta. As directed by your order, I issued

receiver's certificates amounting to 35,000 dollars to pay con-
874 tractors.

These certificates, bearing date ——, were sold at par to the following named parties:

First National Bank, Charlotte	$12,500 00
H. B. Plant	6,250 00
R. Y. McAden	6,250 00
William H Inman	5,000 00
Alfred Austell	5,000 00
	$35,000 00

The account herewith submitted sets forth the amount received for certificates, also the total earnings and disbursements from the first of November, 1878, until 31st May, 1880.

The line was opened for business to Hendersonville on the 5th of June, 1879, since which time the business has steadily improved. At Hendersonville I found the company had no secured rights to any of the land adjointng the depot there.

T. G. Barker, of Charleston, who owned all the land on one side, made a deed to the company for 1½ acres, to be used for R. road purposes.

The other lands necessary to lay side tracks, turn table &c., was owned by G. S. Jones, of Henderson. I had this appraised by com-
petent men, who decided the value at $161.53, which was
875 paid, and a deed for the same made to the R. R. Co. The depot at Hendersonville was built by Messrs. Ripley & Toms, who agreed to allow the R. R. Co. the use of it free for one year.

After that time the company are to pay 8 per cent. per annum on the actual cost of the building, with the privilege of purchasing at cost, at any time they may wish to do so.

The improvements made on the line since its opening to Hendersonville have fully absorbed all the earnings.

It is now in good condition, having been operated since its completion to Hendersonville, with almost entire exemption from accident.

The only loss sustained was caused by the carelessness of an employee, overheating and neglecting a stove in a passenger coach at Hendersonville, which caused its destruction, at a loss [to] the company of $2,500.

Respectfully submitted, JAMES ANDERSON,
Receiver.

Dr.				Cr.			
1879.	To am't received for certificates sold to sundries parties		$35,000 00	1879.	By am't paid for construction as follows:		
1879.					Paid Atlantic Rolling Mill for iron	22,910 28	
Oct. 31.	To earnings from November 1st, 1878, to October 31st, 1879	23,620 92			" W. A. Potts, contractor	7,642 75	
1880.	To earnings from minor sources	16 28			" Rice & Coleman for cross-ties	1,114 60	
May 31.	To earnings from Nov'ber 1st, 1879, to May 31st, 1880	16,700 61			" sundries parties for material, as p'r ac. & vouchers herewith	1,816 26	
1880.			$40,337 81		Paid Fredeger Co., Richmond, Va.	390 86	
May 31.	To due agents for freight balance	3 92			" expenses on convicts	80 00	
" "	" " connecting roads for ticket sales	95 91					$33,954 75
" "	" " Post Office Department	64 24		1879.			
1880.			164 07	Oct. 31.	By expenses from Nov'ber 1st, 1878, to October 31st, 1879	21,321 08	
May 31.	To due S., U. & C. R. R. Co. for Feb'y mileage	464 43		May 31.	By expenses from Nov'ber 1st, 1879, to May 31st, 1880	17,391 98	
" "	To due S., U. & C. R. R. Co. for M'ch mileage	824 88					38,713 06
" "	To due S., U. & C. R. R. Co. for Ap'l mileage	791 91		1880.			
" "	To due S., U. & C. R. R. Co. for May mileage	1,019 29		May 31.	Due by agents, express Co., and connecting roads		773 79
" "	To due S., U. & C. R. R. Co. for one passenger coach (No. 5) burnt at Hendersonville Sept. 27th, 1879	2,500 00		1880.			
			$5,600 51	May 31.	By cash on hand		2,060 28
			$81,102 39				
1880.				1880.			
June 1.	To balance		$5,600 51	May 31.	By balance		5,600 51
							$81,102 39

From above account it will be seen that there is a debit of $5,600.51 dollars, and cash in hands $2,060.28 dollars, leaving a net debit of $3,540.23.

877 And at another term of our said court, begun, opened, and held in the city of Charlotte, in and for the western district of North Carolina, on the 13th day of December, 1880, it being the second Monday of said month of December—

Honorable Hugh L. Bond, judge of the United States circuit court, being present, presiding and holding said court, when on the 22nd day of said month of December a decree was passed in said cause directing the property of the Spartanburg and Asheville railroad to be sold, in the town of Spartanburg, South Carolina, on the first Monday in April, 1881, unless the debts of the defendant railroad company, secured by the mortgage, as found by the special master, be paid on or before the 1st day of April, 1881. Said decree also appoints W. H. Inman & Jno. B. Cleveland commissioners to sell said property. Said decree is in words and figures, as follows, viz:

878 In the Circuit Court of the United States, Western District of North Carolina, Fourth Circuit, at Charleston. In Equity.

V. R. TOMMEY, THE ATLANTA ROLLING MILLS CO., *et al.*, Plantiffs.

vs.

THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY *et al.*, Defendants.

This cause having come on to be heard, having been argued by counsel, and duly considered by the court, it is thereupon adjudged, ordered, and decreed by the court here that unless the debts of the defendant railroad company, secured by the mortgage as found by the special master, be paid on or before the first day of April, A. D. 1881, that all the property described in said mortgage and executed by the defendant railroad company to William H.
879–889 Inman and John B. Cleveland, as trustees, and annexed to said bill of complaint as an exhibit, "consisting of all the railroad constructed, and being constructed, from the town of Spartanburg, in South Carolina, to the town of Asheville, in North Carolina, being a distance of sixty-seven miles, more or less, together with its track, road-bed, and depot lands, its tenements and hereditaments, rights of way and easements, acquired or appropriated for the purpose of a single or double track, telegraph line, and for depots, engine-houses, warehouses, machine shops, superstructures, erections, and fixtures, being necessary for the use of said railroad; and also all and singular the franchises owned, possessed, or acquired, or which shall hereafter be owned, possessed, and acquired by the said railroad company for the purpose of building and ope-
890 rating the said railroad above specified and described; and also all the rails, depots, yards, engine-houses, machine shops, car-houses, station-houses, tanks, work shops, and fixtures, and including also all locomotives, cars, tenders, and other rolling stock or equipments, and all machinery, tools, implements, fuel, and other materials for constructing, operating, and repairing said railroad," be sold at public outcry to the highest bidder by the aforesaid trustees, at the court-house, in the town of Spartanburg, in the State of

South Carolina, on the first Monday in April, A. D. 1881, after giving public notice, as required by said mortgage-deed, by advertisement once a week for sixty days prior to said sale, in the Carolina Spartan, the Charlotte Democrat, the Asheville Citizen, and the Charleston News and Courier, and New York Journal of Com-
891 merce, newspapers, upon the following terms, to wit: The purchaser shall, immediately upon the closing of the bidding, pay the sum of twenty-five thousand dollars cash, and at the expiration of ninety days from the day of sale pay sufficient additional cash to amount to one-third part of his bid, and shall at the same time execute his bond for the balance of the purchase money, payable in twelve months from the day of sale, and shall likewise execute a mortgage of all the aforesaid property as security for the payment of said bond.

That in default of said cash payment the said property shall at once again be offered for sale upon the same terms, and be in like manner offered for sale until the bidder do comply with said terms of sale.

That in default of the payment of said cash balance
892 in ninety days, and the execution of the aforesaid bond and mortgage, the said property shall be resold upon the first Monday of the month that may be at least thirty days succeeding such default, after public notice by advertisement in the newspapers aforesaid once a week for three weeks, upon the same terms as aforesaid, the former purchaser in default forfeiting the cash he has paid.

That upon a purchaser complying with his bid as aforesaid, and executing the required bond and mortgage, the said trustees do execute to him a deed of all the property aforesaid.

That upon the production of the deed last aforesaid the purchaser shall be admitted by the receiver heretofore appointed into the possession of all the property hereinbefore enumerated.

That at the said sale any of the parties to this suit, includ-
893 ing any officers of said defendant railroad company and either of the said trustees, be allowed to bid and become purchasers, and that the purchasers be at liberty to anticipate any and all the deferred payments or any part thereof.

That upon said sale, the said defendant railroad company and all the parties to this suit, and all and every person or persons claiming under them or either of them be forever barred and foreclosed of all right and equity of redemption in, of, and to all and every of the rights, titles, interests, franchises, and property hereinbefore set forth and described.

That out of the proceeds of the said sale, as the same may be paid in, the said trustees do first pay all the expences of the said sale, the costs and expenses of this suit, all taxes then due and payable
894 to either the State of North Carolina or South Carolina, or any county thereof, and retaining for themselves a compensation of one-half of one per centum commission upon the amount realized from the sale, also such amount as may be sufficient to reimburse the receiver for any excess of expenditures legally made

over and above his receipts; that they next pay all outstanding receiver's certificates, with the interest due thereon; that they next pay the receiver and the counsel engaged in the cause, other than those contesting the mortgage and foreclosure, such sums as the special master may, after taking testimony upon the subject matter, report as proper compensation, subject to the approval and confirmation of the court; and to the special master the sum of ——
895 dollars for his fees and compensation for extra labor and services rendered; that they next pay the mortgage bonds in the hands of actual owners, and claims secured by such bonds as collateral, with interest on all the same to the day of payment, provided there be a sufficiency therefor; and should there be a deficiency, then they apply the fund in hand *pro rata* to all the mortgage bonds until the respective debts and claims secured by mortgage bonds held as collateral therefor, as found and reported by the special master, be paid in full; and then if there shall be a surplus remaining, that they apply it, or so much thereof as may be sufficient for the purpose, in the further and full payment of the mortgage bonds held by actual owners thereof, as found and reported by the special master; that they next, if there be any surplus,
896 apply the same to the payment *pro rata* of all the remaining claims proven against the defendant railroad company, as reported proven by special master in his said report; and that they hold the balance, if any, subject to the further order of this court.

It is further ordered and directed that the right of way in and over the land claimed by S. M. Rice & R. L. Coleman, partners under the name & style of Rice and Coleman, be vested in the said railroad company, and that the right of way in and over the tract of land described in the report of the special master as the Caruth land, be vested in the defendant railroad company upon paying E. Clayton the sum of twenty-five dollars, and complying otherwise with the laws of North Carolina respecting the acquiring of the right of way by railroad companies.

897 It is further ordered that in case any creditor holding any claim proven in this cause become purchaser, after payment of sufficient cash to pay the aforesaid costs and expenses of this suit, the taxes that may be due as aforesaid, the compensation herein provided for the trustees, the reimbursement of the receiver, the outstanding receiver's certificates, as hereinbefore directed, the compensation of the receiver, and the counsel engaged in this cause, and the compensation to the special master, as has been hereinbefore directed to be paid; then the dividend to which said creditor's claim may at the time of any payment by him be entitled, shall be received by the trustees as so much cash, such creditor executing a proper legal voucher for such dividend.

It is further ordered and directed that the funds realized
898 under the order for sale, hereinbefore made, be deposited by the trustees in some national bank in the town of Spartanburg, in the city of Atlanta, or the city of Charlotte, as the trustees may select, to be advanced by their joint orders as may be required.

That prior to the sale hereinbefore ordered the trustees do each

give a bond to the clerk of the circuit court of the United States for the western district of North Carolina, at Charlotte, in the penal sum of fifty thousand dollars, with two securities to each bond, to be approved by the said clerk and conditioned for the lawful discharge of their duty as prescribed by the requirements of this order.

It is further ordered that the said trustees do report their actings and doings, in pursuance of this decree, to this court, at the
899 term next succeeding such sale; and that this cause be retained for the consideration of said report; and that any party hereto have leave to apply at the foot of this decree for such further orders herein as may be deemed necessary.

It is further ordered and directed that should the *bona fide* holders of receiver's certificates become purchasers of the said railroad company's property, then in that event, upon the second payment hereinbefore required, that the said receiver's certificates shall be received as cash for the amount of said certificates, upon the execution by the said holders of said certificates of a legal vouchers therefor to the said ——.

HUGH L. BOND,
C't Judge.

900 And at the said term, to wit, December term, 1880, of our said court, and on the 22nd day of said month, the following proceedings are had, to wit:

Appeal prayed in open court; notice waived and granted in behalf of the defendants, The Commissioners of Buncombe County, N. C., E. Clayton, J. E. Fry & J. A. Deal, partners under the name & style of Fry and Deal; R. W. Allen, A. Cannon, & J. P. Johnston, partners under the name & style of Al-en, Cannon & Co.; W. P. Fortune, M. J. Fagg, George C. Perrin; S. M. Rice & R. L. Coleman, partners under the name & style of Rice and Coleman; John Garrison, and H. H. Gramlin.

And afterwards, to wit, January 3rd, 1881, an appeal bond in the sum of five hundred dollars is filed in our said court by said defendants, in words and figures as follows, to wit:

901 Know all men by these presents, that we, James H. Merriman, Erwin Sluder, William M. Cocke, Jr., and James P. Sawyer, all of Asheville, in the county of Buncombe and State of North Carolina, are held and firmly bound unto James Hall McKenny, clerk of the Supreme Court of the United States, in the full, just sum of five hundred dollars, current money of the United States, to be paid to the said James Hall McKenny, his heirs, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-ninth day of December, in the year of our Lord one thousand eight hundred and eighty.

Whereas lately at a United States circuit court for the
902 western district of North Carolina, at Charlotte, in said district, in a suit depending in said court in equity between V. R. Tommey, The Atlanta Rolling Mill Company, and others, as plaintiffs, and The Spartanburg and Asheville Railroad Company and others as defendants, a final decree was rendered against the said defendant, and the said defendants, the Commissioners of Buncombe County, E. Clayton, Fry & Deal, Geo. C. Perrin, Allen, Cannon & Co., H. H. Gramling, W. P. Fortune, M. J. Fagg, Rice & Coleman, C. T. Coleman, —— Williamson, having prayed and obtained an appeal to remove the said cause to the Supreme Court of the United States, and filed a transcript of the record of said court in said cause in the office of the clerk of the Supreme Court of the United
903 States to reverse the decree in the aforesaid suit:

Now, the conditions of the aforesaid and above obligation is such that if the said obligors shall well and truly pay or cause to be paid the said James Hall McKenny, his heirs, executors, administrators, or assigns all such fees as shall accrue to him, the said James Hall McKenney, clerk as aforesaid, and charged to the said defendants in the prosecution of said appeal, then the above obligation to be void; otherwise to remain in full force and virtue.

JAMES H. MERRIMAN. [SEAL.]
ERWIN SLUDER. [SEAL.]
WM. M. COCKE, JR. [SEAL.]
JAMES R. SAWYER. [SEAL.]

Sealed and delivered in presence of—
V. L. TOMMEY,
U. S. Commissioner.

STATE OF NORTH CAROLINA, *Buncombe County:*

Personally appeared before me, V. L. Tommey, U. S. Com'r,
904 James H. Merriman. Erwin Sluder, Wm. M. Cocke, Jr., and James P. Sawyer, who, being by me duly sworn, each says for himself that he is worth the amount of the above bond of five hundred dollars over and above the homestead and personal property, exemptions, and liabilities.

Witness my hand and seal, 30th Dec., 1880, Asheville, N. C.
[SEAL.] V. L. TOMMEY,
U. S. Com'r.

Said bond is endorsed as follows, viz: "Presented, approved, and ordered to be filed. Rob't P. Dick, U. S. dist. judge. Jan'y 1st, 1881."

And afterwards, to wit, March 22nd, 1881, W. H. Inman, one of the commissioners appointed to sell the Spartanburg and Asheville Railroad property, files in our said court his bond in the sum of fifty thousand dollars, with R. Y. McAden and Alfred Austell as sureties thereon; which said bond is in words and figures as follows, viz:

905 UNITED STATES OF AMERICA.

Know all men by these presents, that we, William H. Inman, Rufus Y. McAden, and Alfred Austell, are held and firmly bound unto ——, the clerk of the circuit court of the United States for the western district of North Carolina, at Charlotte, in the penal sum of fifty thousand dollars, to be paid to the said ——, as clerk as aforesaid, his successors in office or assigns, to which payment, well and truly to be made and done, we bind ourselves, and each of us, and our and each of our heirs, executors, and administrators, for the whole and in the whole, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this, the —— day of February, in the year of our Lord one thousand eight hundred and
906 eighty-one, and in the one hundred and fifth year of the sovereignty and independence of the United States of America.

Whereas by an order, passed at December term, 1880, of the circuit court aforesaid, in the cause entitled V. R. Tommey *et als. vs.* The Spartanburg and Asheville Railroad Company *et als.*, it is provided, "that prior to the sale hereinbefore ordered, the trustees do each give a bond to the clerk of the circuit court of the United States for the western district of North Carolina, at Charlotte, in the penal sum of fifty thousand dollars, with two securities to each bond, to be approved by the said clerk, and conditioned for the lawful discharge of their duty as prescribed by the requirements of this order:"

Now the condition of the above obligation is such, that if the above bound William H. Inman, one of the trustees above
907 named, does and shall lawfully discharge his duty as prescribed by the requirements of the above mentioned order, then the above obligation to become utterly null and void, or else to remain in full force and virtue.

WILLIAM H. INMAN. [L. S.]
RUFUS Y. McADEN. [L. S.]
ALFRED AUSTELL. [L. S.]

Signed, sealed, and delivered in the presence of as to the signature of Wm. H. Inman—
JAMES SWAN.

As to the signature of R. Y. McAden—
E. K. P. OSBORNE.

As to the signature of Alfred Austell—
W. W. NUTTING, *N. P.*

UNITED STATES OF AMERICA, } *ss:*
Western District of North Carolina, }

R. Y. McAden, being duly sworn, says that he is worth the sum of fifty thousand dollars in his own right over and above
908 all his debts and liabilities and property exempt from execution.

R. Y. McADEN.

Subscribed and sworn to before me, this 28th day of March, A. D. 1881.

H. C. COWLES,
Clerk U. S. Courts for said District,
By E. K. P. OSBORNE,
Deputy Clerk.

This bond is satisfactory to and is hereby approved by me, M'ch 29, 1881.

H. C. COWLES, *Clerk.*

And afterwards, to wit, April 2nd, 1881, John B. Cleveland, one of the commissioners appointed to sell the Spartanburg and Asheville railroad property, files in our said court his bond in the words and figures as follows, to wit:

909 UNITED STATES OF AMERICA:

Know all men by these presents, that we, John B. Cleveland, Rufus Y. McAden, and Alfred Austell, are firmly bound unto Henry C. Cowles, as clerk of the circuit court of the United States for the western district of North Carolina, in the penal sum of fifty thousand dollars, to be paid to the said Henry C. Cowles, as clerk as aforesaid, and his successors, to the payment of which we bind ourselves, our heirs, administrators, and executors, jointly and severally by these presents.

Signed and sealed by us, this the second day of April, A. D. 1881, at Spartanburg, S. C.

Now, whereas in the order of sale made in the cause of Vincent R. Tommey, the Atlanta Rolling Mill Co., *et al.*, *vs.* The Spartanburg and Asheville R. R. Co. *et al.*, it was required that the above
910 bound John B. Cleveland should execute this obligation, conditioned for the lawful discharge of his duty as trustee under said order of sale.

The condition of this obligation is such, that if the said John B. Cleveland as trustee shall discharge his duty as required by said order, and in accordance with law, then this obligation shall be void and of none effect; otherwise to be of full force and virtue.

JNO. B. CLEVELAND. [SEAL.]
R. Y. McADEN. [SEAL.]
ALFRED AUSTELL. [SEAL.]

Signed, sealed, and delivered in presence of—
JAS. H. RION.

UNITED STATES OF AMERICA,
Western District of North Carolina, } *ss:*

R. Y. McAden, being duly sworn, says that he is worth the sum of fifty thousand dollars in his own right over and above all his debts and liabilities and property exempt from execution.

R. Y. McADEN.

911 Subscribed and sworn to before me, this 2nd day of April, A. D. 1881.

H. C. COWLES,
Clerk U. S. Courts for said District,
By E. K. P. OSBORN,
Deputy Clerk.

This bond is satisfactory to and is approved by me, this April 11th, 1881.

H. C. COWLES, *Clerk.*

And afterwards, to wit, April 25th, 1881, William H. Inman and John B. Cleveland, commissioners, as aforesaid, file in our said court their report of sale of said railroad property; which said report is in words and figures as follows, to wit:

912 In the Circuit Court of the United States, Western District of North Carolina, Fourth Circuit, at Charlotte. In Equity.

V. R. TOMMEY, THE ATLANTA ROLLING MILL CO., *et al.*, Plaintiffs,
vs.
THE SPARTANBURG AND ASHEVILLE RRILROAD COMPANY *et al.*, Defendants.

To the honorable, the circuit court of the United States for the western district of North Carolina, sitting in equity:

The undersigned, William H Inman and John B. Cleveland, trustees, directed to make sale of the Spartanburg and Asheville railroad by the order of this court, passed in the above entitled cause, at Charlotte, at December term, A. D. 1880, respectfully beg leave to report:

That after having executed and filed the bonds required
913 of them by the said order of sale, and after having advertised the Spartanburg and Asheville railroad property in the newspapers and as directed by the said order, the undersigned offered for sale the Spartanburg and Asheville railroad before the court-house, in the town of Spartanburg, South Carolina, on Monday, the 4th day of April, A. D. 1881, at 12 o'clock m.

The order of sale made by this court directing the sale of said railroad was first read. After the reading of said order, and as the auctioneer began to cry the sale, Mr. R. L. Coleman came forward and said: "I forbid the sale, because Rice and Coleman have claims for work against this road, which under the mechanics' lien law of North Carolina and another statute law of North Carolina
914 are prior liens to all other claims."

The auctioneer then proceeded with the sale.

Mr. Joseph Walker bid $70,000. This bid was cried for a few minutes, when Mr. R. L. Coleman bid the sum of $100,000. After the crying of this bid a short time Dr. A. M. Smith bid $110,000. This bid was cried for some time, when Mr. Joseph Walker bid $111,000. This bid was cried for about ten minutes without an advance being obtained, when Col. James H. Rion, attorney for the trustees, an-

nounced that unless a higher bid was obtained within a short time, the bidding would be closed. The auctioneer thereupon proceeded to cry the bid of Mr. Joseph Walker of $111,000 for a short time longer, but obtaining no response, he knocked the Spartanburg and Asheville railroad property down to Mr. Joseph Walker on
915 behalf of himself and others of the bondholders for the sum of one hundred and eleven thousand dollars, that being the highest bid obtained therefor.

There were present at the sale a large number of persons from different parts of the States of North Carolina and South Carolina, including a large majority of the bondholders and some of the "contractors;" the sale was also attended by many of the counsel engaged in the cause, and Mr. J. H. Merriman, one of these counsel, was also present in the town.

Immediately after the sale Mr. Joseph Walker and the other bondholders for whom he had made the bid organized themselves into a railroad corporation, under the name and style of The Asheville and Spartanburg Railroad Company, in pursuance of the pro-
916 visions of the act of the General Assembly of South Carolina, approved March 24th, 1876, entitled "An act to enable the purchasers of railroads to form corporations and to exercise corporate powers, and to define their rights, powers, and privileges" (XVI Stats. at Large, p. 160); and this corporation forthwith complied with the terms of the sale by paying one-third of their bid in cash to wit, $37,000.00, and executing their bond to the undersigned as trustees, conditioned for the payment, on the 4th day of April, 1882, of $74,000.00, secured by a mortgage upon all the railroad property and franchises sold. Thereupon the undersigned executed a deed of all the railroad property and franchises sold to the said The Asheville and Spartanburg Railroad Company.

The undersigned further report that they have deposited one-half of the $37,000 received [in] Atlanta National Bank, in
917 city of Atlanta, Georgia, and the other one-half of said $37,000 in the First National Bank of Charlotte, in the city of Charlotte, North Carolina, both deposits subject to their joint orders as trustees.

All of which is respectfully submitted.

WM. H. INMAN,
JNO. B. CLEVELAND,
Trustees.

William H. Inman, trustee, makes oath that the facts set forth in the foregoing report, of his own knowledge, are true.

WM. H. INMAN.

Sworn to and subscribed before me, this June 9th, 1881.

H. C. COWLES, *Clerk,*
By E. K. P. OSBORNE,
Deputy Clerk.

918 And on another day, to wit, May 16th, 1881, A. Burwell, special master, files in said court a report in regard to the

compensation to be allowed to the solicitors in this cause; the said report (and the testimony filed with same) is in words and figures as follows, viz:

919 *Report.*

In the Circuit Court of the United States, Western District of North Carolina.

V. R. TOMMEY *et al.*
against
THE SPARTANBURG & ASHEVILLE RAILROAD CO. *et al.*

On this the 2 day of May, 1881, after notice to the counsel in the above case, "other than those contesting the foreclosure of the mortgage," I proceeded to hear the matter referred to me by the decree made by his honor Judge Bond, at December term, 1880, when there were present Jas. H. Rion, D. R. Duncan, E. H. Bobo, and James Anderson.

And thereupon J. H. RION, having been duly sworn, said:

I have represented in this case directly and exclusively the $204,000 of bonds held by W. H. Inman, and indirectly the $224,000 of bonds entered here as held by the S., U. & C. R. R. Co. and J. H. Inman, my charge being to look to the interest of J. H. In-
920 man; I have attended different references and upon the court here since, making arguments before Judge Bond, and also attended the court which Judge Bond held when he pronounced his decision in this case. I was consulted in reference to the different — in the cause, with the exception of the original bill and the answer of the railroad company. I drafted the order for the amendment of the bill; I advised Mr. Inman, one of the trustees, from the beginning of the suit to the present time. He only allowed his name to be used, or signed papers as advised by me; I drew up the separate bonds of the two trustees, attended the sale of the road, and supervised the conduct of the sale, and examined the bond and mortgage given by the purchasers. I drew up the conveyance of the road by the trustees to the purchasers; I attended personally to the probate of the mortgage given by the purchasers in So. Carolina and in No. Carolina; I gave a great deal of labor
921 and attention to the preparation of the argument before Judges Bond and Dick. After that argument, the counsel on the other side suggested to Judge Bond the decision of the United States Supreme Court in the case of Brooks *vs.* The Railway Co., (101 U. S.)

This matter was mentioned to me by Judge Bond, so as to allow me an opportunity to reply. In order to do this, I had to make an examination into the statute law and decisions of Iowa. I laid the result of my investigation before Judge Bond in writing, the result of which was that Judge Bond held that the case of Brooks *vs.* Railway Co. did not control this cause, although upon the face of the decision it did appear to be conclusive against our side. I also drew up for Judge Bond the body of the order of sale; I drew up the

report of the trustees on the sale; I have also attended to giving the adverse attorneys the notice required by rule of court of the filing of that report.

922 I have had considerable experience as a lawyer in suits of this nature concerning railroads, and this is so well known that I have had submitted to me decrees for the sale of a railroad in another State by the judge before he signed the same.

In making my charge for services in this cause I do not regard time and expense of coming here from another State, for that, under ordinary circumstances, I do not consider a fair charge. Being under oath, as I am, I estimate my services in this cause above stated (and I have rendered other valuable services not there stated) as to be worth forty-five hundred dollars.

Examined by Mr. BOBO:

I am aware of the fact that Maj. Duncan, as president of the R. R. Co., and from the knowledge which he had acquired of the business of the road, more especially the financial transactions, has in this cause rendered valuable services, not simply as a witness,

923 but by his counsel and advice. Mr. Duncan is a lawyer of high standing in South Carolina, and without his having his experience and attainments as a lawyer he would not have been able to have made his services above mentioned of such value as they were in the conduct of this cause. He has necessarily devoted a great deal of time and attention to the case. His services as president have contributed to the value of the property which has produced the fund in court. The testimony in this case shows that the company is in arrears to him for services something over three thousand (3,000) dollars. This, however, I mention as an equity.

Regarding now the legal element of the services rendered, I would say that Mr. Duncan ought to be paid one thousand dollars at least, this to cover all charges for attendance as a witness, &c.

(S'g'd) JAS. N. RION.

And then E. N. BOBO, being duly sworn, said:

924 Col. Jno. H. Ennis, Jno. E. Bomar, and myself were employed as counsel for the S. & A. R. R. Co. in this cause. We prepared the answer of said defendant to the original bill. We have attended four terms of the court at this place. We procured the passing of an order providing for the issuing of receiver's certificates, whereby the road was extended from its terminus at Coleman's to Hendersonville, in consequence of which the road was made to pay its running expenses. We have advised the president of the company from the beginning of this suit to the present. We have examined the legal position taken by the different counsel representing the several interests in the case, and prepared ourselves to meet any position taken by any of said counsel, which in our opinion would militate against the general interest of the road. To occupy this position necessarily involved a large amount of labor, expense, and trouble.

We estimate our services at the sum of five thousand dollars for the three jointly.

925 I now present the account of Messrs. Jno. W. Carlisle and S. J. Simpson, attorneys, representing the trustees in the cause. I believe the amount charged in the account for their services ($2,000.00) to be reasonable compensation for the same. This claim is in no way connected with the preceding one, either as to the subject-matter or the claimants.

926 United States Circuit Court, Western District of North Carolina. In Equity.

V. R. TOMMEY *et al.*
vs.
THE SPARTANBURG & ASHEVILLE R. R. COMPANY *et al.*

John B. Cleveland, Esq., trustee to Carlisle & Simpson, att'ys for said trustee:

To services in answering the complaint in the above-stated cause, and counsel for said trustee from the commencement of the above-named cause to the present time, $2,000.00.

We submit the above amount of two thousand dollars as a suitable and reasonable compensation for services a- counsel for the trustee in above-stated case.

April 31, 1881. JNO. W. CARLISLE.
S. J. SIMPSON.

We certify that in our opinions the sum of two thousand dollars is a reasonable fee for the services of the within-named attorneys.

April 31st, 1881. RALPH K. CARSON, *Att'y.*
C. P. SANDERS, *Att'y.*
J. K. JENNINGS, *Att'y.*

From the information I have in this matter, I believe the fee asked for is reasonable.

J. S. R. THOMSON.

Examined by Mr. RION:

I have heard the testimony of Col. Rion in this matter, and I think the charge made by him reasonable, and the statement of the value of his services to be correct. I know Col. Rion to be a lawyer of large experience and considerable reputation. I know that he has had more than usual experience in matters connected with railroad litigation.

I also heard Col. Rion's testimony in regard to the nature and value of Maj. Duncan's services in this cause. I agree altogether with Col. Rion in reference to the propriety of compensating Maj. Duncan for said services, and think that the amount fixed by Col. Rion ($1,000.00) is less than their value. I would fix his compen-

927 sation at fifteen hundred dollars.

(S'g'd) E. H. BOBO.

J. N. RION was then re-called, and being examined by Mr. Bobo, he said:

I have heard the testimony of Mr. Bobo in regard to the services of himself and Messrs. Evins and Bomar, and am acquainted with the legal standing and professional ability of Mr. Bobo and Mr. Evins, and know by reputation that of Mr. Bomar. I would say that their charge for services, the same to be divided between the three according to whatever may be their own arrangement, is a reasonable one. I think it but justice to Mr. Bobo to say that the bulk of the labor done in this matter has been performed by Mr. Bobo individually. I would also say that I think the charge made by Messrs. Carlisle and Simpson ($2,000) is reasonable.

(S'g'd) JAS. H. RION,

Maj. D. R. DUNCAN, being duly sworn, was examined by Mr. Rion. He said:

928 I have known Col. Rion for a long time as a lawyer of large practice both in the State and United States courts in So. Carolina. It comes to my knowledge that he has had very large practice in the management of suits relating to corporations, banks, railroads, &c. I think that that kind of practice is a specialty with Col. Rion, and I would say that he has had more experience in that line than any other lawyer in South Carolina. I know of his services in this cause from its beginning to the present time, and I think the charge made by him for his services a reasonable one. I am a lawyer, and am now solicitor for the 7th jud. circuit of S. C. I am also attorney for the A. & C. A. L. R'y Co. in the counties of Sgartanburg and York. I know the services rendered by Messrs. Bobo, Evins, and Bomar, and have heard the testimony of Mr. Bobo in regard thereto. I think the charge made by them to be reasonoble. Mr. Bobo performed the bulk of the labor.

Examined by Mr. BOBO:

929 I know that Messrs. Carlisle and Simpson represented the trustees in this cause, and I regard the sum charged by them for their services to be reasonable.

(S'g'd) D. R. DUNCAN.

JAS. ANDERSON, being duly sworn, said:

I submit an account showing the total receipts and disbursements of myself, as receiver, appointed in this cause, from the day of my appointment, November the 1st, 1878, to the day of sale, April 4th, 1881. That account is correct to the best of my knowledge and belief. I have given fully one half of my time to the management of the property. I superintended the construction of the road from Coleman's to Hendersonville, eight miles.

I have been engaged in railroad business for 26 years, and have been superintendent of the C. C. & A. and N. C. R. R'ds, and of the J. P. & M. R. R. of Florida, and other roads. I was superintendent of C. C. & A. R. R. at salary of $2,500.00 in 1865, and of N. C. R. R.

after that at $3,000.00. Then I was superintendent of J. P. & M. R. R. at $4,000.00 per annum.

I think that two thousand dollars a year would be a reason-
930 able compensation for my service as receiver, not including an allowance of three hundred dollars per annum for hire of clerk.

I was superintendent of N. C. & A. and C. C. & A. R. R., jointly, for five years, (from 1873) at a salary of $4,000.00.

(S'g'd) JAS. ANDERSON.

And then the further hearing of the matter was postponed till May 3rd, 1881.

When JNO. E. BROWN, being duly sworn, said:

I was attorney for the Spartanburg, Union and Columbia R. R. Co. in conjunction with Mr. Bynum, and represented the interest of said road before the circuit court and the special master; and for my services rendered in this cause I charge five hundred dollars, which I consider a reasonable charge for said services. I assisted in making the brief which was filed in the cause.

(S'g'd) JNO. E. BROWN.

R. Y. MCADEN, being duly sworn, said:

I am president of the S., U. & C. R. R. Co., a bond creditor'
931 and, as such, I employed Judge Bynum and Jno. E. Brown, Esq., to represent said road in this cause. I was present during the whole progress of the case, attending each term of the court and before the referee. I was formerly a practicing lawyer and engaged in railroad suits, and have been directly interested in suits to foreclose two railroad mortgages, to wit: The N. N. C. R. R. and the S. & U. R. R. My opinion is that the fees that should be allowed Judge Bynum and Mr. Rion should be three thousand dollars each, and to Mr. Thompson two thousand dollars; to the attorney representing the S. & A. R. R. Co. one thousand dollars; to the attorney representing Mr. Cleveland, one of the trustees, one hundred dollars, as Col. Rion represented the trustees and did the work other than mere clerical labor.

As to the claims of D. R. Duncan and Jno. E. Brown I think they are reasonable and just.

I think that the receiver should be allowed two thousand dollars
932 a year, and also three hundred dollars per year as pay for an auditor and treasurer, as he was required to file a bond in the sum of fifty thousand dollars, and assume the whole responsibility of the road, and has managed the road in a very economical manner, and to the entire satisfaction of those interested in the property and of the public.

Examined by Mr. RION:

I have read the testimony of Mr. Rion in regard to the propriety of making an allowance of one thousand dollars to D. R. Duncan,

and I agree with him fully as to that, and for the reasons given by Mr. Rion.

Mr. McAden further said:

The road sold for $111,000.00, and in its present condition, as an investment, it is worthless, as the earnings will not pay the ordinary expenses and the necessary wear and tear and decay in the number of trestles and track, the road having been badly constructed with very inferior material. The road passes through a mountainous country, almost entirely undeveloped, and no material in-
933 crease of income from the developement of that country can be reasonably expected for years to come, and the only way to make the property remunerative is for the parties owning it to expend $350,000.00 in finishing the road to Asheville and placing the present road in a safe condition. Taking into consideration the value of the property, and the value of other railroads sold under decrees of foreclosure, even the fees suggested by me are the largest known to me in any railroad litigation in this State or South Carolina. Any large allowance would give great dissatisfaction to the creditors, who have lost very heavily in the transaction, they having to buy the property, and they could not resell it to any party so as to realize 50 per cent. of their claim.

(S'g'd) R. Y. McADEN.

Jno. E. Brown was then recalled, and he said:

I think that a fair allowance to W. P. Bynum for his services in this case would be $3,500.00, and to Mr. Thompson $2,000.00 is ample.

934 I think Mr. Rion should have three thousand dollars for the services I know of his performing of my own knowledge, but I am informed that he did other labor in the case, which should entitle him to five hundred dollars in addition to the amount above stated.

I think one thousand dollars fair compensation for the attorneys representing the S. & A. R. R. Co.

I know nothing of services rendered by the attorneys representing Mr. Cleveland, except the filing of an answer for him. I think five hundred dollars fair compensation for them.

I concur with Mr. Rion and Mr. McAden as to the allowance to Mr. Duncan and Mr. Anderson.

935 Atlanta, Ga., *April 15th*, 1881.

Whereas Hon. W. P. Bynum, of North Carolina, and William S. Thomson, of Georgia, attorneys-at-law, have represented to us that they, for and in behalf of the complainants, in the case of V. R. Tommey, The Atlanta Rolling Mill Co., *et al.*, *vs.* The Spartanburg and Asheville R. R. Co. *et al.*, in the circuit court of the United States for the western district of North Carolina, at Charlotte, prepared the bill for forclosure, and after argument, at Greensboro', N. C., before Judge Dick, obtained a restraining order, and afterwards, at Charlotte, before the same judge, obtained an injunction, which

cause, after the coming in of the answer, interlocutory orders, two arguments before Judge Bond, at separate terms of the court, attendance at the taking of testimony, as shown in the report of the master, they conducted to a successful termination, resulting in the sale of the mortgage property to the bondholders for one hundred and eleven thousand dollars.

And whereas our opinion, as solicitor and attorney, familiar with such proceedings, and having knowledge of the value of such services, have been invoked by said Bynum and Thomson, they showing that the bonds amounted to over $600,000, securing over $300,000 of indebtedness. We do certify that in our opinion
936 a reasonable compensation for the services rendered by said Bynum and Thomson (they not being members of the same firm) would be not less than the amounts we have respectfully affixed op-osite our names.

McCay and Abbott, value of ser's	$10,000
Julius L. Brown, solicitor and master in chancery, U. S. C't Comb. N. D., Ga.	$10,000
Jno. L. Hopkins	$10,000

937 *Bill for Forclosure of Mort. Injunction, &c.*

In the Circuit Court of the United States for the Western District of North Carolina, at Charlotte. In Equity.

V. R. TOMMEY and THE ATLANTA ROLLING MILL Co. *et al.*,
against
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY *et al.*

To A. BURWELL, *Special Master in above-stated cause:*

You are hereby notified that we, as the solicitors of the complainants in above-stated cause, claim, for the professional services rendered, (as reasonable compensation for the service rendered,) the sum of ten thousand dollars, which amount we ask that you (as the special master to whom the matter of our compensation has been referred in the decree made in said case) allow and report as our proper compensation.

WM. S. THOMSON, *Sol'r &c.*
W. P. BYNUM.

938 UNITED STATES OF AMERICA, *Northern District of Georgia:*

At Atlanta, in the county of Fulton, Ga., before me, a United States circuit court commissioner in and for said district, personally came William S. Thomson, who, on oath, says that the above and foregoing claim for compensation is reasonable and just, and that the services rendered in said cause are reasonably worth the amount claimed.

WM. S. THOMSON.

Sworn to and subscribed before me, this April 15th, 1881.
W. B. SMITH, *U. S. Com.*

939 *Bill to Foreclose Mortg., &c.*

In Circuit Court of U. S. for Western Dist. of N. C., at Charlotte.

IN THE MATTER OF V. R. TOMMEY *et al.*

vs.

THE SPARTANBURG AND ASHEVILLE R. R. Co. *et al.*

A. BURWELL, Esq., *Special Master:*

As solicitor for V. R. Tommey and The Atlanta Rolling Mill Co., the holders of bonds of the said S. and A. R. R. Co. to the amount of $110,000, I prepared the bill filed in said case, which was intended to and did protect the interests of all the bondholders. Knowing that the Hon. W. P. Bynum represented the S., U. and C. R. R. Co., I sent the bill to him with the expectation that we would write and share equally in the fee that would be allowed out of the sale of the property. He, representing both of us, obtained the temporary restraining order and the appointment of a receiver. Afterwards I attended every court and watched and assisted in all that was done up to the final decree. Judge Bynum and I prepared and submitted a printed brief, argued the cause several times, and had no direct assistance. The Hon. Jas. H. Rion appeared in the cause as special counsel of W. H. Inman until after the report of the master
940 and the order making the trustees parties comp-ainant, so that practically Judge Bynum and myself were the only counsel representing the interests of the bondholders. Through and by means of the bill prepared by me, and the subsequent labors of Judge Bynum and myself, the interest of the bondholders were protected, and without my bill they would have been greatly injured.

As shown by your report, the amount due the bondholders on the 1st of Nov., 1879, was $338,787.06, and said bondholders are now the owners of the property which cost, if I mistake not, some $700,000 or $800,000. In addition to the other labor performed by me, I attended and conducted for complainants the examination of witnesses before Hoke Smith, Esq., special commissioner, and as one of the purchasing committee for the bondholders, attended the sale of the road at Spartanburg and assisted in the purchase. Thus performing my whole duty from beginning to end. In my opinion my services were well worth six thousand dollars, but I only claim five thousand dollars, and insist that that amount should be allowed me. Had I not brought the case originally I would not value my services so highly as I do Judge Bynum, which were simply invaluable, but in my opinion he ought to be allowed six thousand dollars,
941 apart from services rendered the receiver, with which I had no connection. Another fact that should be borne in mind in passing upon my fee is the loss of time from my business. In one case I lost a fee of one thousand dollars by reason of my absence in this case, and I think it would be safe to say that I have lost fifteen hundred dollars in fees while absent attending to said case.

Again, it is not assuming too much to say that, but for me, the road would not have been completed to Hendersonville, for, apart from what I did to accomplish its completion, had I interposed ob-

jections and resisted the completion of the road, it is reasonably certain the judge would not have passed the order for its completion. For these and innumerable reasons I am satisfied that the fee I demand is not only reasonable, but low, and as the services were rendered by Judge Bynum and me, which really benefitted the bondholders, our fees ought not to be affected by the claims of other attorneys, although I do not attack their claims, but let them stand on their own merit.

Respectfully, WM. S. THOMSON.

Sworn to and subscribed before me, May 13th, 1881.

A. BURWELL,
Special Master.

942 From the foregoing statement we are satisfied that Mr. Thompson is entitled to a fee of at least five thousand dollars, taking into consideration the amount involved, the services rendered, and the beneficial results of the litigation; this amount is below what we would have placed his fee at, if we had been called on to fix it in the first instance.

Dated this May 10th, 1880.

HOPKINS AND GLENN,
Attorneys-at-Law.

From the facts stated above, and the information we get from Mr. Thomson, we think five thousand dollars a proper fee for his services.

May 10, '81. MYRVATT AND HOWELL,
Attorneys-at-Law.

I agree with the opinion of Hopkins and Glenn. I think five thousand dollars low, and I am generally "below the mark" in such cases.

H. K. McCAY.

I concur in the opinion of Ex-Justice H. K. McCay.

JULIUS L. BROWN,
Master in Chancery, U. S. Circuit Ct., Northern Dist. Ga.

I am satisfied that the compensation asked for by Mr. Thomson is reasonable and just.

May 11th, 1881. R. P. TRIPPER,
Attorney-at-Law.

943 I fully concur in the statement above made by Ex-Judge of the Supreme Court, R. P. Tripper.

This 11th May, 1881. JOHN CARRIER,
Attorney-at-Law.

944 On May 13th, 1881, the hearing of this matter was resumed.

Present: W. S. Thompson and W. P. Bynum, Esq.

W. S. THOMPSON, being duly sworn, says:

I reiterate my statement contained in the petition this day filed with the special master, and state further that $111,000, the amount for which the road was sold, is not a fair test of its value, as the purchasing committee, of which I was a member, agreed that in no event should it go to an outside party for less than $300,000, but that it might go at $400,000, they to determine at the bidding whether they would or not run it to the full $400,000.

In answer to question put to me by the special master, I would say the gross amount of fees that should be allowed counsel out of the fund in court should not exceed $15,000—$10,000 of which should be paid to Judge Bynum and myself; $2,000 to Mr. Rion; $500 to Mr. Brown, and $2,000 to the other attorneys.

I fix Col. Rion's fee at $2,000 as the outside amount that should come to him out of the fund in court; but do not by this mean to say that he should not receive a much larger fee for the services rendered by him in connection with this case. His entire
945 services were probably worth $5,000, but most of them were rendered to W. H. Inman individually, and should be paid for by him, and not be paid out of the fund brought into court mostly through the services rendered by Judge Bynum and myself.

I think Maj. Duncan should be allowed $1,000, for the reason given by Mr. Rion and others.

I would refer to the pleadings, orders, &c., filed in the cause, to show what services were rendered by the several attorneys and in whose behalf.

(S'g'd) W. S. THOMPSON.

And on May 14th, 1881, the following statement was filed by Hon. W. P. Bynum:

946 A. R. TOMMEY *et al. vs.* THE S. and A. R. R. Co. *et al.*

W. S. Thomson, Esq., and myself were alone employed and instructed to institute and conduct the action for the foreclosure and sale of the def't road, and we did institute the action by Mr. Thomson preparing the bill, which was examined and amended by me in some particulars, and process was issued under my direction, and the suit was conducted by us two as the leading and managing counsel through all of its stages to the final decree ordering the sale, &c. The action was instituted by us in the name of A. R. Tommey and The Atlanta Rolling Mill Co., in their name and the name of all the other bondholders. I represented also $224,000 of bonds held and owned by the S. and A. R. R. Co., and Mr. Thomson and myself associated with him $110,000 of bonds held by Tommey and the rolling mill, plaintiffs in the action. I appeared with the bill before Judge Dick, at Greensboro', N. C., argued the case alone before him on a motion for a restraining order and injunction against the contractors, five or six of whom had instituted suits and were prosecuting mechanics' liens and other claims against the Co. to the amount

of near $100,000. I obtained and wrote the restraining
947 order, and at the next term of court again argued the case on motion for injunction and receiver, both of which orders were obtained and written by me, and, in conjunction with Mr. Thomson, a further order was obtained directing the receiver to complete the road to Henderson.

Doubts were entertained by capitalists whether the court could authorize the receiver to complete the road and issue certificates of indebtedness for the work, which should be a first lien upon the whole road, capitalists refusing to advance the money without some such assurance. Mr. Southward, law partner of Mr. Grarts, had been consulted, and gave in writing an opinion to parties interested in the construction of the road adverse to such power. I was applied to by Mr. McAden for my written opinion upon the question. I spent a considerable time in examination of the authorities and the study of the question, and gave my opinion in writing and at length, giving reasons and citing decisions that the receiver had such power, and such certificates were a first lien. I have been induced to believe that my opinion had much to do with it, and was used to procure successfully the advancements of money to complete the road to Hendersonville, without which the road would be of little value, if any. I attended one day at Hendersonville, one
948 & 949 at Spartanburg, and several at Charlotte, before the commissioner or special master in taking testimony and the account ordered.

I argued the case twice before Judge Bond, and, with Mr. Thomson, prepared an elaborate printed brief in the cause upon all the questions raised by the defendants, who contested every point and the foreclosure and sale in all stages of the action.

During the progress of the action, and after the answers came in impeaching the justice and equity of same, the bondholders' claims, other counsel specially employed to represent these claims when attacked thus, came into the case as representing these claims, and in so doing incident-ly assisted Mr. T. and myself in the further progress of the case.

By far the most laborious part of the case was conducted by Mr. T. and myself, who were, as I supposed, the only counsel who instituted and presented the action, as counsel in the whole case, from beginning to ending.

I was employed by the receiver, under an order of the court so ordering, to defend some five cases in Polk superior court, instituted by the contractors, claiming nearly $100,000 by liens and alleged liens, and who disregarded the injunction and pressed their claims. I wrote answers or filed demurrers in all the cases, and made two trips to Polk attending court. I only charged a nominal fee
950 of $100.00 in these cases for services rendered, which was paid by the receiver, and has no connection with this suit, except that it concerned the same road; but for this reason the charge was nominal, as I expected all my services would be considered upon this reference of the whole matter to the special master. But for this I should have charged not less than $500 in the receiver's cases

in Polk, and think that would be a reasonable fee. I have neither charged, been offered, or expect to receive any other fee or compensation, otherwise than here charged in this case, from any bondholder or other person or corporation whatever.

I estimate the reasonable value of my services, as aforesaid, to be $5,000, and make a charge in the case of that sum. I am not familiar enough with the legal services of the other attorneys, except Mr. Thomson, to give an opinion as to the value of their services. I was associated with Mr. T., and conducted the case in consultation with him exclusively throughout the case. I had occasional consultations with other att'ys in the later stages of the case. Mr. Thomson's services were worth $5,000, in my estimation.

W. P. BYNUM.

Sworn to & subscribed before me, May 14th, 1881.

A. BURWELL,
Special Master.

951 Jas. Anderson, Receiver, in account with the Spartanburg and Asheville Railroad Company.

1879.	DR.		
	To amount received for certificates sold to sundries parties		$35,000 00
1879.			
October 31.	To earnings for year ending Oct. 31, 1879	$23,637 20	
1880.			
October 31.	To earnings for year ending Oct. 31, 1880	32,974 40	
1881.			
April 4.	To earnings from November 1st, 1880, to April 4th, 1881	13,734 89	
			70,346 49
	To due Spartanburg, Union and Columbia R. R. Co. for one passenger coach burned at Hendersonville, N. C., September 27th, 1879		2,500 00
	To due Spartanburg, Union and Columbia R. R. Co. for assistant to receiver from Nov. 1st, 1878, to April 4th, 1881, @ the rate of $300.00 per year		727 88
			$108,574 37
	To balance		$3,227 88

952 CR.

1879.	By amounts paid for construction, as follows:			
	Paid Atlanta Rolling Mills for iron	$22,910 28		
	Paid W. A. Potts, contractor	7,642 75		
	" Rice and Coleman, for ties	1,114 60		
	" Sundries for material, as per acc'ts	1,816 28		
	" Tredegar Iron Works, Richmond, Va	390 86		
	" Expenses on convicts	80 00		
				$33,954 75
1879.				
October 31.	By expenses for year ending Oct. 31, 1879	$21,321 08		
1880.				
October 31.	By expenses for year ending Oct. 31st, 1880	34,561 19		
1881.				
April 4.	By expenses from November 1st, 1880, to April 4th, 1881	14,861 19		
				$70,743 46
April 4.	Due by Post Office Department			547 73
April 4.	By cash in treasurer			100 55
	By balance			3,227 88
				108,574 37

953 In the Circuit Court of the United States, Western District of North Carolina.

V. R. TOMMEY *et al.*

vs.

THE S. AND A. R. R. CO. *et al.*

To the honorable the judges of the said court:

I herewith submit the evidence taken before me, together with the statements and accounts filed by the several attorneys in the above-stated case, upon the hearing of the matter referred to me by the decree made at [the] December term, 1880. By that decree I was required to report what allowance should be made "to the counsel other than those contesting the foreclosure of the mortgage" out of the fund arising from a sale of the Spartanburg and Asheville Railroad for services rendered in this cause.

The several attorneys have either appeared in person before me or have filed accounts and statements, all of which are hereto at-

tached, and after careful consideration of the same I respectfully submit the following:

I find and report that there should be allowed to Mess. W. S. Thompson and W. P. Bynum, jointly, the sum of eighty-six hundred dollars.

954 These gentlemen filed the original bill and performed the greater part of the labor in the case, all of which is fully set out in the several statements. Mr. Bynum attended many days upon the taking of testimony in the case, and was for a long time engaged at Charlotte and elsewhere in the management of the case. They present a charge for the two jointly, and this sum is allowed, to be divided as they cho-se.

I find and report that there should be allowed Mr. Jas. H. Rion the sum of three thousand ($3,000) dollars. Mr. Rion represented Mr. W. H. Inman as trustee and as a creditor, and also looked to the interest of Mr. Jno. H. Inman. His services in this case are no doubt of the value stated by himself and others, but out of the fund to be distributed that seems his fair proportion.

I find and report that there should be allowed to Mess. Bobo, Evins, and Bomar twelve hundred ($1,200) dollars.

These gentlemen represented the defendant railroad company, and it seems that out of the fund the creditors should pay the above amount for their services.

I find and report that there should be allowed to Mess. Carlisle and Simpson the sum of eight hundred dollars.

955 They represented Mr. Cleveland one of the trustees.

I find and report that there should be allowed to Jno. E. Brown, Esq., who was attorney for the Spartanburg, Union and Columbia R. R. Co., a creditor, the sum of four hundred ($400.00) dollars.

I refer to the testimony of Mr. Jas. H. Rion and others as to the reason for making an allowance of one thousand dollars to Maj. D. R. Duncan, and I respectfully recommend that that sum be allowed to him, the same to be in full of all charges in the cause.

The aggregate of the above allowance is fifteen thousand dollars, which seems to be as much as should be paid out of this fund for counsel fees, and that any further compensation due to the several attorneys should be arranged between them and their clients. Fixing that amount as the sum to be divided, I have endeavored to distribute it among the claimants according to the amount of labor performed as shown by the pleadings, orders, &c., filed in the court, by the statements made before me, and now sent with this report.

I have examined the accounts of the receiver and find the same to be correct. The condensed statement of receipts and dis-

956 bursements, which is hereto attached, shows that *that* the earnings of the road from November 1st, 1878, to April 4th, 1881, amounted to the sum of $70,346.49, which amount, together with $35,000.00 from certificates issued, has been expended, except $100.55 cash on hand and $547.73 not collected, but due from the P. O. Department. The receiver is indebted to S., U. and C. R. R. Co. for rebuilding a car, $2,500.00.

I find and report that the receiver should be allowed two thousand dollars per annum from November 1st, 1878, to April 4th, 1881, for his own service, and also three hundred dollars a year for same time for salary of an auditor and treasurer.

Respectfully submitted,

A. BURWELL,
Special Master.

957 And at another term of said court, begun, opened, and held in the city of Charleston, in and for the western district of North Carolina, on the 13th day of June, 1881, it being the second Monday of said month of June—

The Hon. Hugh L. Bond, judge of the United States circuit court, being present, presiding, and holding said court, when on the 13th of June the defendants, S. M. Rice & R. L. Coleman, as partners under the name & style of Rice & Coleman, J. E. Fry & J. A. Deal, partners under the name & style of Fry & Deal, and E. Clayton, by their solicitors, Coleman & Merriman, file in said court exceptions to the report of A. Burwell, special master, making allowances to be paid to counsel, which said exceptions are in words and figures as follows, viz:

958 Circuit Court of the U. S., Western District of N. C. June Term, 1881.

V. R. TOMMEY and others
vs.
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY and others.

The defendants, S. M. Rice & R. L. Coleman, partners under [the] name & style of Rice & Coleman, J. E. Fry & J. A. Deal, partners under the name & style of Fry & Deal, & E. Clayton, except to the report of A. Burwell, special master herein, making allowances to counsel and others as follows:

Exception 1. For that the said special master has made allowances to be paid out of the proceeds of the sale of the Spartanburg and Asheville roailroad to counsel for individual holders of bonds, to D. R. Duncan, whereas the said special master should only have allowed compensation to be paid out of said fund to the counsel who brought this suit and prosecuted it to final decree for foreclosure.

959 Exception 2. For that the said special master makes an allowance of one thousand dollars to Maj. D. R. Duncan, without finding that said Maj. Duncan rendered any service, as counsel or otherwise, to entitle him to an allowance out of said fund.

Exception 3. For that said special master makes an allowance to counsel for the defendant, The S. & A. R. R. Company, to be paid out of the proceeds of said sale, which said allowance ought not to have been made.

Exception 4. For that said special master makes an allowance to the receiver for an auditor, which ought not to have been made.

Exception 5. For that said special master has made too great an allowance to said receiver.

COLEMAN & MERRIMAN, *Sol's.*

960 And on said day, to wit, June 13th, 1881, the defendants, S. M. Rice & R. L. Coleman, partners under the name & style of Rice & Coleman; E. Clayton, J. E. Fry & J. A. Deal, partners under the name & style of Fry & Deal, and the petitioning creditors, M. J. Fagg, W. P. Fortune, R. W. Allen, A. Cannon, & J. P. Johnston, partners under [the] name & style of Allen, Cannon & Co.; H. H. Gramlin, Geo. C. Perrin, Thadeus Coleman, by their solicitors, Messrs. J. H. Merriman and —— Coleman, file their joint exceptions to the report of the sale of the Spartanburg and Asheville railroad, made by W. H. Inman and John B. Cleveland, trustees, which said exceptions are in words and figures as follows, viz:

961 In the Circuit Court of the United States for the Western District of North Carolina. At Charlotte, June Term, 1881.

V. R. TOMMEY, THE ATLANTA ROLLING MILL COMPANY, and others, Plaintiffs,

vs.

THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY and others, Defendants.

The defendants, S. M. Rice, & R. L. Coleman, partners under the name & style of Rice & Coleman, E. Clayton, J. E. Fry & J. A. Deal, partners under the name and style of Fry & Deal, and the petitioning creditors, M. J. Fagg, W. P. Fortune, R. W. Allen, A. Cannon, & J. P. Johnston, partners under the name & style of Allen, Cannon & Co.; H. H. Gramling, Geo. C. Perrin, Thadeus Coleman, jointly except to the report of the sale of the Spartanburg and Asheville railroad, made to this court by W. H. Inman & John B. Cleveland, trustees, as follows:

Exception 1. For that it does not appear, from the said report, who became the purchaser at said sale, the said report stating
962 only that said railroad property was knocked down to Mr. Joseph Walker, for himself and other bondholders, without showing what bondholders.

Exception 2. For that W. H. Inman, one of the trustees who made said sale, is one of the largest bondholders of the mortgage bonds of said Spartanburg and Asheville Railroad Company, and is one of the bondholders for whom said purchase or bid was made.

Exception 3. For that the sum bid for said railroad property, to wit, the sum of one hundred and eleven thousand dollars, is a grossly inadequate price for said property, and less than one-sixth of its actual costs and of its value, as appears from the testimony on file in this case.

Exception 4. For that said report does not show that said bid was made for and on behalf of said W. H. Inman, as stated in exception 2, above.

963 Exception 5. For that said trustees executed a deed for

said property on the day of the sale and before said sale was reported to and confirmed by this court, and said deed was executed to a corporation which does not appear to have been the purchaser at said sale.

Exception 6. For that as appears by said report, the said trustees gave only a very short time in which to allow bids for said property to be considered and made.

COLEMAN & MERRIMAN, *Sols.*

And at said term of our said court, to wit, June term, 1881, an order was passed in said cause overruling exceptions filed by said defendants and confirming the sale of said property, which said order is in the words and figures as follows, to wit:

964 In the Circuit Court of the United States for the Western District of North Carolina, Fourth Circuit, at Charlotte. In Equity.

V. R. TOMMEY, THE ATLANTA ROLLING MILL CO. *et al.*, Plaintiffs,
vs.
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY *et al.*, Defendants.

William H. Inman and John B. Cleveland, trustees, having on the 25th day of April, 1881, filed their report upon the sale of the Spartanburg and Asheville Railroad property and franchises, made by them on the 4th day of April, 1881, in obedience to the order of this court passed in the above-entitled action at December term, 1880, and exceptions thereto having been taken:

After hearing argument of counsel—

965 It is ordered that said sale be approved and confirmed.

June 13th, 1881. HUGH L. BOND,
C't Judge.

Appeal.

And at the said stated term of our said court, to wit, June term, 1881, and on the 13th day of said month, the following proceedings are had, to wit: Report of sale of the defendant railroad property franchises, &c., was read, and exceptions to confirmation of said sale filed; exceptions are argued by counsel; exceptions overruled; an order confirming sale filed. Hon. R. P. Dick, associate judge, dissenting from order confirming sale, the defendants, the commissioners of Buncombe county, E. Clayton, J. E. Fry & J. A. Deal, partners under the name and style of Fry and Deal; R. W. Allen, A. Cannon, & J. P. Johnston, partners under the name and style of Allen, Cannon & Co.; W. P. Fortune, M. J. Fagg, George C. Perrin, S. M. Rice & R. L. Coleman, partners under the name and style of Rice and Coleman, John Garrison, and H. H. Gramlin, pray an

966 appeal in open court; notice waived and appeal granted; and at the said June term, 1881, of our said court, the holders of receiver's pay certificates file their consent to the payment of costs and expenses of suit, &c., in the words and figures as follows, to wit:

967 In the U. S. Circuit Court, Western Dist. of North Carolina.
In Equity.

V. R. TOMMEY, THE ATLANTA ROLLING MILL CO. *et al.*
vs.
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY *et al.*

We, the undersigned, holders of receiver's pay certificates, issued in pursuance of orders in the above-stated case, do hereby consent that out of the funds now in the hands of the trustees, there be first paid the expences of suit, the expences of sale, commissions of trustees, such compensation and allowance as may be approved by the court for the special master, receiver, and others; also taxes and the balance due the Spartanburg, Union and Columbia Railroad Company.

This, the 14 day of June, 1881.

W. H. INMAN.
A. Y. McADEN,
R. Y. McADEN,
Pres't First National Bank of Charlotte.
H. B. BLOUNT,
A. AUSTELL,
By R. Y. McADEN, *Att'y.*

968 At the said June term, 1881, of said court, and on said day, to wit, June 13th, 1881, the solicitors in this cause filed in said court a statement in writing as to the amount of compensation for A. Burwell, special master, which said statement is in words and figures following, viz.:

969 United States Circuit Court, Western District of North Carolina, 4th Circuit of the U. S.

V. R. TOMMEY, THE ATLANTA ROLLING MILL CO. *et al.*,
Plaintiffs,
vs.
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY
et al., Defendants.

The undersigned, solicitors in the above-stated cause, finding that the order of sale makes no provision as to the mode by which the amount of compensation for the special master, Armisted Burwell, Esq'r, shall be determined, respectfully suggest to the court, in order to aid its judgment in this behalf:

That they are acquainted with the amount and character of the services rendered, and give their individual opinions as to
970 what would be a proper compensation for the same, this to include all references by him held under any order of court, heretofore passed, by signing their names hereto, with their estimates opposite their several signatures.

All of which is respectfully submitted.

JAMES H. RION, thirteen hundred dollars
EDW. H. BOBO, thirteen hundred & fifty dollars.
JNO. E. BROWN, thirteen hundred dollars.
W. P. BYNUM, thirteen hundred dollars.

And at the said stated term of our said court, to wit, June term, 1881, and on the 14th day of said month, a decreetal order on the report of the special master, and fees and compensation of the solicitors was made and passed in the words and figures as follows, to wit:

971 In the Circuit Court of the United States for the Western District of North Carolina.

Fourth Circuit at Charlotte.

V. R. TOMMEY, THE ATLANTA ROLLING MILL CO., *et al.*
vs.
THE SPARTANBURG AND ASHEVILLE RAILROAD COMPANY *et al.*
} In Equity.

The special master having filed his report upon the fees and compensation and other matter referred to him, and exceptions thereto having been filed, and said report and exceptions coming up before me for a hearing, after hearing argument of counsel and a consideration of the evidence filed with the said report:

It is adjudged that the said exceptions be so far allowed that the report of the special master be approved and confirmed to the following extent only, it being otherwise not approved; that is to say—

972 It is ordered that there be allowed to Messrs. Bynum and Thompson jointly the sum of eighty-six hundred dollars in full for their legal services rendered in the case.

To Mr. James H. Rion, the sum of three thousand dollars in full of his legal services rendered. That the allowance to Messrs. Bobo, Evins, and Bomar, to Mr. Brown, and to Mr. Duncan be not approved. That Messrs. Carlisle and Simpson be allowed two hundred ($200) dollars in full of their legal services.

That the receiver be allowed for his general services rendered from the 1st November, 1878, to 4th of April, 1881, a compensation of twelve hundred dollars per annum; and for the services of the auditor and treasurer for the same period, a compensation of three hundred dollars per annum.

It is further ordered that the finding of the special master
973 upon the receiver's account be approved.

The counsel in the case having filed a statement of their valuation of the services of the special master rendered up to date, inclusive, after a consideration of said statement—

It is ordered, that the special master be allowed the sum of thirteen hundred dollars for his said services.

The holders of the receiver's pay certificates proven in this cause having filed their written consent to a postponement of their claims—

It is further ordered that the trustees as forthwith pay out of the funds now in their hands the allowances and compensations hereinbefore approved and allowed, in sums as stated, the costs of suit, the expenses of sale, their commissions, all taxes due or as-
974 sessed upon the defendant railroad company, the balance of

twenty-five thousand dollars reported by the special master as due the Spartanburg, Union and Columbia Railroad Company, and that they pay the balance to the holders of the receiver's pay certificates *pro rata* upon the amount proven.

It is further ordered, that in paying the receiver, the trustees cause to be offset the balance reported to be now in his hands and any sums he may have collected since his accounting. This 14th June, 1881.

HUGH L. BOND, *C't. Judge.*
ROB'T P. DICK, *Judge.*

And afterwards, to wit, September 22d, 1883, an order from the Supreme Court allowing the withdrawal of the original transcript, a motion to file appeal bond, and to amend record, &c., appelle-'s objection to said motion, and order of court allowing amendments, and filing of appeal bond are filed as of our regular June term, 1883, which said order, motion, objection, and order allowing amendments are in the words and figures as follows, viz:

975 Supreme Court of the United States. October Term, 1882.

THE COMMISSIONERS OF BUNCOMBE COUNTY *et al.*, Appellants,
vs.
VINCENT R. TOMMEY *et al.* } No. 751.

On motion of Mr. A. S. Merrimon, of counsel for the appellants, it is ordered by the court that leave be granted him to withdraw the original transcript of the record filed in this court in this cause for the purpose of correcting the same, provided the corrected transcript is returned on or before the first day of the next term.

19th April, 1883.

True copy:
[L. S.] Test: JAMES H. McKENNEY,
Clerk Supreme Court U. S.

976 In the circuit court of the United States, in equity, for the western district of North Carolina, at chambers, a motion in the words and figures following, to wit:

Motion to File Appeal Bond and to Amend Record, &c.

"U. S. Circuit Court for the West. Dist. of N. C., Charlotte. June Term, 1883.

THE COMMISSIONERS OF BUNCOMBE COUNTY *et al.*, Appellants,
vs.
VINCENT R. TOMMY *et al.*, Appellees.

Appellants moved to be allowed to file appeal bond in the sum of five hundred dollars now as of the time when the appeal was taken; also, for an order requiring the clerk of this court to amend the transcript of the record in this cause, (heretofore filed in the U. S. Supreme Court, but returned by order of said Court for correction,)

so as to make it set out the full name of the members of the several firms mentioned in the record, and for further and other corrections.

Motions all continued by consent, to be heard without
977 prejudice, at chambers, the first Monday in September, 1883, as of this term."

On the back of which is the following words and figures, to wit:

"(7.) VINCENT R. TOMMY *et al.*

vs.

THE SPARTANBURG & ASHEVILLE RAILROAD COMPANY *et al.*

"Let these motions be put on minutes.

ROBT P. DICK, *Judge.*"

"Filed in office June 13, 1883.

H. C. COWLES, *Clk,*
By E. K. P. OSBORNE, *D. C.*"

"Enrolled on circuit court equity minutes on page 71.

H. C. COWLES, *Clerk,*
By E. K. P. OSBORN, *Deputy Clerk.*"

Comes on to be heard at chambers, this first Monday in September, A. D. 1883, in pursuance of said order and stipulation. Whereupon Hon. W. P. Bynum, of counsel for the appellees, in the cause in said motion mentioned, comes and files exceptions and objections to the hearing of said motion, in the words and figures following, to wit:

"*Appellees' Objection to Motion.*

978 "U. S. Circuit Court, Western Dist. of North Carolina, at chambers, Greensboro, N. C. 1st Monday in Sept., 1883.

"ATLANTA ROLLING MILLS *et als.*

vs.

THE SPARTANBURG R. R. Co., ASHEVILLE R. R. Co.

Motion to amend record, &c., by def'ts.

The plaintiffs, by their counsel, oppose the allowance of the motion of the defendants, and assign as grounds therefor:

1. That U. S. dist. judge has no jurisdiction to make the amendment, or to make them at chambers, as proposed.

2. That there is nothing to amend *by,* the record not being present and only the transcript.

3. The court has no power to amend the transcript without first amending the original record.

4. The record of the case being in the custody of the court of Charlotte, where the case was tried and the appeal taken, and the said original not having been transferred to Greensboro or brought before the court there, it is incompetent for the court there to make the proposed amendments to the transcript.

5. It is too late to file the bond proposed, and the court has
979 no power to allow the same.

6. It does not appear that the transcript is not a full and perfect transcript of the record.

Objections filed by the complainants 1st Monday in Sept., 1883.

W. P. BYNUM,
Atto. for Comp'ts.

Order of Court.

Upon consideration, the court is of opinion that as the said motions were continued at the last term of the said circuit court at Charlotte, to be heard by consent of parties at chambers on the 1st Monday in September, A. D. 1883—this day—without prejudice, the court can hear the said motions and determine the same in the absence of the original record in the said cause, a transcript thereof being present and before the court.

It appears, to the satisfaction of the court, from the pleadings and the other papers filed in the said cause, that J. E. Fry and J. A. Deal composed the firm in said cause and the record thereof called Fry
& Deal, and that they were partners trading under the name
980 and style of Fry & Deal; that R. W. Allen, A. Cannon, and J. P. Johnston composed the firm of Allen, Cannon & Co., mentioned in said cause and in the record thereof as Allen, Cannon & Co., and that these were partners trading under the name and style of Allen, Cannon & Co.; that S. M. Rice and R. L. Coleman composed the firm of Rice & Coleman, mentioned in said cause and the record therein as Rice & Coleman, and that they were partners trading under the name and style of Rice & Coleman:

It is therefore considered by the court that the said appellants be allowed to file an appeal bond in said cause in the sum of five hundred dollars as of the last term of the said court at Charlotte aforesaid, the same to be approved and accepted by the court and filed on or before the first day of October next.

It is therefore ordered by the court that, in each and every instance in the record in said cause, and in the transcript thereof sent to the Supreme Court of the United States on said appeal, the clerk
981 of the said circuit court of Charlotte insert wherever the names of "Fry & Deal" appear the names J. E. Fry and J. A. Deal, partners under the name and style of Fry & Deal; and wherever therein the names Allen, Cannon & Co. appear the names R. W. Allen, A. Cannon, and J. P. Johnston, partners under the name and style of Allen, Cannon & Co.; and wherever therein the names Rice & Coleman appear the names S. M. Rice and R. L. Coleman, partners under the name and style of Rice & Coleman. The clerk will enter these proceedings and this order on the minutes of the court of equity as of the last June term of said court at Charlotte.

The said clerk will also certify the same and attach it to the transcript of the record to be sent to the Supreme Court on said appeal.

ROB'T P. DICK, *Judge.*

982 *Prosecution Bond.*

Know all men by these presents, that we, M. E. Carter, W. H. Penland, & R. L. Coleman, are held and firmly bound unto Vincent R. Tommy, The Atlanta Rolling Mill Company, W. H. Inman and John B. Cleveland, trustees, in the full and just sum of five hundred dollars, to be paid to the said Vincent R. Tommy, The Atlanta Rolling Mill Company, W. H. Inman and John B. Cleveland, trustees, certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated the 9th day of June, in the year of our Lord one thousand eight hundred and eighty-three.

Whereas lately, at a regular term of the circuit court of the United States for the western district of North Carolina, at Charlotte, in said district, in a suit depending in said court between Vincent R.
983 Tommy, The Atlanta Rolling Mill Company, and W. H. Inman and John B. Cleveland, trustees, plaintiffs, against The Spartanburg and Asheville Railroad Company, E. Clayton, S. M. Rice, and R. L. Coleman, under the firm name & style of Rice & Coleman, Eli Fry and J. A. Deal, under the firm name & style of Fry & Deal, The Commissioners of Buncombe County, George C. Perrin, R. W. Allen, A. Cannon, & J. P. Johnston, under the firm name of Allen, Cannon & Co., W. P. Fortune, M. J. Fagg, George C. Perrin, S. M. Rice & R. L. Coleman, under the firm name of Rice & Coleman, John Garrison, and H. H. Gramlin, having obtained an appeal to remove the said cause to the Supreme Court of the United States, and filed a transcript of the record of said court in said cause in the office of the clerk of the Supreme Court of the United States to reverse the decree in the aforesaid suit:

Now the condition of the above obligation is such, that if
984 the said defendants shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

R. L. COLEMAN. [SEAL.]
M. E. CARTER. [SEAL.]
W. H. PENLAND. [SEAL.]

NORTH CAROLINA, *Buncombe County*:

This day personally appeared before me, A. L. Summey, United States commissioner, the above-named M. E. Carter, who, being by me duly sworn, says that he is worth one thousand dollars over and above his property exempt from sale under execution, & over and above his debts & liabilities.

M. E. CARTER.

Sworn and subscribed, this 9th day of June, 1883.

A. L. SUMMEY, *U. S. Com'r.*

This bond was presented September 13th, A. D. 1883, and the same is approved & accepted, and ordered to be filed in the cause therein named.

ROB'T P. DICK, *Judge.*

985 UNITED STATES OF AMERICA,
Western District of North Carolina:

Circuit Court, Fourth Circuit, at Charlotte, in said District.

I, H. C. Cowles, clerk of the circuit court of the United States in and for the western district of North Carolina, at Charlotte, in said district, do hereby certify the foregoing writing to be a full, true, and perfect transcript and exemplification of the record and proceedings in the case of Vincent R. Tommy, Atlanta Rolling Mill Company, and others, plaintiffs, against The Spartanburg and Asheville Railroad Company, John B. Cleaveland and W. H. Inman, trustees, The Commissioners of Buncombe County, N. C., J. E. Fry and J. A. Deal, partners under the name and style of Fry and Deal, R. W. Allen, A. Cannon, and J. P. Johnston, partners under the name and style of Allen, Cannon & Co., S. M. Rice and R. L. Coleman, partners under the name and style of Rice & Coleman, E. Clayton, W. P. Fortune, M. J. Fagg, Geo. C. Perrin, John Garrison, and H. H. Gramlin, defendants, as fully as the same remain on file and of record in my office.

986 In witness whereof, I hereunto subscribe my name and affix the seal of said court, at office, in the city of Charlotte, in said district, this the 27th day of September, in the year of our Lord one thousand eight hundred and eighty-three.

[SEAL.] H. C. COWLES, *Clerk.*

Endorsed on cover: W. North Carolina C. C. U. S. No. 136. The Commissioners of Buncombe County, E. Clayton, Fry & Deal, Allen, Cannon & Co., W. P. Fortune, M. J. Fagg, Geo. C. Perrin, Rice & Coleman, John Garrison, and H. H. Gramlin, appellants, *vs.* Vincent R. Tommey, The Atlanta Rolling Mill Company, and Wm. H. Inman & John B. Cleveland, trustees, &c. Filed 22d October, 1881.

Office Supreme Court U. S.
FILED
DEC 16 1884
JAMES H. McKENNEY,
CLERK.

115-122

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 136.

THE COMMISSIONERS OF BUNCOMBE COUNTY AND OTHERS

vs.

TOMMEY AND OTHERS,

(*From Western District of North Carolina.*)

BRIEF FOR THE APPELLANTS SEVERALLY.

S. F. Phillips,
For the Appellants.

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 136.

THE COMMISSIONERS OF BUNCOMBE COUNTY AND OTHERS

vs.

TOMMEY AND OTHERS,

(*From Western District of North Carolina.*)

BRIEF FOR THE APPELLANTS SEVERALLY.

This is a bill in equity, filed October 26, 1878, by certain holders of the bonds of a railroad company, to enforce a mortgage by which these are secured, and in that connection to clear the mortgaged property of certain liens asserted by contractors for the construction of the road.

The case upon the whole is the not unusual one of a wreck of a railroad company whilst in process of construction, together with a contention over the remains from such wreck between bondholders and those who constructed the road.

The main question turns upon the meaning of certain statutes of North Carolina: one, regulating the conditions upon

which corporations can make mortgages, the other creating liens in favor of persons doing work or furnishing material.

The complainants are: Tommey a citizen of Georgia, and The Atlanta Rolling Mills Company a corporation of that State; and the defendants are: The Spartanburg and Asheville Railroad Company, the common debtor, a corporation created by the laws of North and South Carolina; Cleaveland & Inman, trustees under the mortgage; S. M. Rice and R. L. Coleman, partners as Rice & Coleman; J. E. Fry and J. A. Deal, partners as Fry & Deal; E. Clayton, and John Garrison.

Record, p. 1.

Since the bill was filed, changes have been made in the parties: Cleaveland & Inman have become plaintiffs, (p. 295.) The commissioners of Buncombe county (stockholders in the Spartanburg & Asheville Railroad Company) have been made defendants, (pp. 36 and 57,) and certain other creditors also have intervened:

The bill alleges that—

The Spartanburg & Asheville Railroad Company was created July 31, 1874, by the consolidation, under the laws of North and South Carolina, of two corporations theretofore existing under the laws of those States respectively:

In 1876 this company resolved to issue coupon bonds to the amount of $670,000, and, thereupon, October 1, 1876, executed a mortgage to Cleaveland & Inman, as trustees, conveying its road, franchise, &c., to secure them. A copy thereof, and of the bonds, is set out, and presents the usual features:

Tommey purchased five thousand dollars' worth of these, par value, and the Atlanta Rolling Mills Company furnished iron, (to an amount of which about $55,000, and interest, is still due,) upon a previous stipulation to be secured by mortgage bonds to twice the value thereof, and thereupon it received

such bonds, of which it still holds $105,000, the coupons thereupon from January 1, 1878, being still unpaid, whereby, in accordance with the mortgage, the whole bonded debt has become due and payable, (p. 7):

The defendants, Rice & Coleman, Fry & Deal, E. Clayton, and John Garrison, claim some lien upon the property of the railroad company, &c., as contractors, &c., to the amount of about $60,000, (p. 7);

[Other allegations of the bill as to the necessity of a receiver, the completion of a portion of the road, the claims of Rice & Coleman, and Clayton as purchasers of a part of the road, &c., seem not necessary to be considered upon this appeal, and are therefore omitted.]

The prayer is for an injunction against the contractors, for a sale, distribution of the proceeds, &c.

A copy of the mortgage begins upon page 12; a copy of the bonds upon page 14.

The answer of the Spartanburg & Asheville Company (see also pp. 296–7) substantially admits the allegations of the bill, (pp. 25 and 33.)

Upon this coming in, (Oct. 30, 1878,) a receiver was appointed, and the contractors were temporarily enjoined, &c.

The answer of the trustees, also, substantially admits the allegations of the bill, and, indeed, joins *in its prayer for relief*, (p. 31.) As already said, these subsequently became plaintiffs, (pp. 295, 297, &c.)

At December term, 1878, another order of injunction was made, (p. 36.)

The answer of Garrison alleges that, being a mechanic, on the 1st day of December, 1876, he contracted for and afterwards built a trestle for the Spartanburg & Asheville Com-

pany, and on the 2d of June, 1877, another trestle, both being within Polk county, North Carolina; that he completed the work February 18th, 1878, and that a balance of $3,263.44 &c., is still due thereon; that February 2d, 1878, he filed a notice of lien in the clerk's office of Polk county, and Aug. 10, 1878, began suit to enforce it.

The answer of Fry & Deal denies the validity of the mortgage; alleges that said Inman, one of the trustees, and also a director in the S. and A. Co., has possession of certain county bonds belonging to said company, for the proceeds of which he should account; that the embarrassments of that company are due to his misconduct, and that of other persons who occupied relations of trust to it; also that the company owes them $6,335.16, &c., for materials and work upon trestles in Polk county: Contract made June 2, 1877; executed June 17, 1878; notice of lien filed August 3, 1878, and suit to enforce October 18, 1878, (pp. 43, 49, &c.)

The answer of E. Clayton (pp. 51, &c.) also denies the validity of the mortgage, and alleges breaches of trust by Inman and others. It also asserts a claim of $25,848.86, &c., for work done (grading, &c.) upon the road in Polk county under a contract made before the execution of said mortgage, and executed before its registration. (See p. 73.)

The answer of Buncombe County (put in upon a claim that the S. and A. Co. had virtually deserted the defense) states that it is a stockholder of the S. and A. Co.; denies the validity of the mortgage, and sets up certain breaches of trust by Inman and other fiduciaries as having caused the embarrassments of the company, and asks that they be rectified in this suit, &c., (pp. 57, &c.)

The answer of Rice & Coleman also denies the validity of the mortgage, and alleges that the S. and A. Company

are indebted to them in $22,935.23, &c., for work, labor, and materials upon its road in Henderson county, North Carolina, such work having been begun June 1, 1876, and ended May 1, 1878; also that they have filed notice of lien and brought suit in such county, (pp. 64 and 67; and see pp. 161, &c.)

Reference for a report was made at June term, 1879, and the report was returned December 2, 1879, (p. 74.)

It sets out that the S. and A. was duly created by consolidation July 31, 1874, and that upon the 9th of December, 1874, such consolidation was recognized by a statute of North Carolina; and besides that all of the parties to this suit have so acted towards such consolidated company as to be bound to recognize its existence:

That the mortgage was duly executed October 1, 1876, and was duly registered in Polk county, North Carolina, on the 22d of November, 1878; in Henderson county, November 23, 1878, and in Buncombe county, November 28, 1878:

That $642,000 worth of the mortgage bonds have "passed out of the possession of the company," of which $4,500 to the South Carolina Railroad Co. at par for freight, no coupons of January, 1878, or since, having been paid, the S. & A. Co. being insolvent and without funds; $2,400 to E. Clayton for work, and $5,000 sold by the Atlanta Rolling-Mill Co. to the plaintiff, Tommey:

That the other mortgage bonds proved amount to $615,000 principal, and these are held by titles (valid for $554,787), as collateral for debts which (November 1, 1879) amount to $324,943.40. That other bonds held as collateral, amounting to $15,000, have not been proved:

That Inman, whilst director and trustee, being a creditor of the S. & A., received from its president as collateral county bonds which belonged to it to the amount of $210,900, and that in 1876, upon his demanding to be paid, the presi-

dent of the company, without direct authority, sold them to him at 50 cents, their then value, although now they are worth 85 cents: (p. 78.)

That the debt due to the Atlanta Mills Co. is $56,680.19 (p. 80), secured by $105,000 of mortgage bonds in its hands, and that to Tommey is $5,000 and interest, the bonds having been sold to him by the Atlanta Mills Co.:

As for the contractors:

(*a.*) *Fry & Deal* (p. 82), contracted to build trestles in Polk county June 2d, 1877; Fry was a mechanic, and worked and superintended; Deal was not. They furnished material for the trestles, and were partners. When the work was done they knew that the mortgage had been executed; that they filed notice of lien in Polk county for $6,333.16, August 3d, 1878, and began suit thereon October 18, 1878:

(*b.*) *Garrison*, (p. 83), began work on trestle in Polk county in December, 1876, under a contract; sublet it, but furnished the timber; 2d June, 1877, contracted for another trestle, which was completed February 17, 1878; has filed liens; is a mechanic, and did part of the work, but generally acted as a contractor; was a stockholder in the S. & A. until 1878, and knew that the mortgage had been made:

[As to Fry & Deal and Garrison the referee was of opinion that if they have a lien, it is superior to that of the bondholders.]

(*c.*) *Rice & Coleman*, (p. 84,) contractors, (referring for details to minutes not given). Balance due, $22,935.23, &c. Coleman was a shareholder in the S. & A. and knew of mortgage, and after October, 1876, received $62,000 in county bonds, &c.:

(*d.*) *E. Clayton*, (p. 84,) contractor, and creditor on that account for $3,316.87 and interest for work on the South Carolina

division of road before August, 1876, due before the execution of the mortgage; another contract for work before October 1, 1876, in North Carolina, upon which is due $23,661.05 and interest since November 1, 1877; he was a stockholder when the mortgage was authorized, and did not vote against it, and knew the mortgage had been executed, and himself owns some of the bonds:

The State of North Carolina has no interest in the Spartanburg & Asheville Company: (p. 85.)

[As to Rice and Coleman and E. Clayton the referee was of opinion that they have no lien under the special statute, 1872–'3 (below), as they claim.]

The report concludes that a sale is necessary, and recommends a scheme for distributing the proceeds, &c.

Here follows a statement of the evidence upon which the report is based.

Both plaintiffs and defendants excepted to the report (pp. 274 to 287), but it does not appear that anything was done thereabouts, or that the report was confirmed, except as the decree may throw light upon this.

At December term, 1879, certain petitions in this cause were filed by creditors, (pp. 287, &c.)

After the trustees had become plaintiffs, &c., amended answers were filed, (pp. 300, &c.,) and an amended report was made, (p. 315,) but it is not material to notice these.

Upon the 13th of December, 1880, a decree was rendered for a sale by the trustees, directing the proceeds to be distributed first amongst the bondholders, &c., &c., and the balance, if any, amongst the other creditors, &c., (pp. 328, &c.)

At the same term (December 22d), in open court, an appeal was prayed (notice being waived), and was granted to the commissioners of Buncombe, to Clayton, Fry & Deal, Rice & Coleman, as well as other persons standing upon the same footing, but whose claims were worth less than $5,000 each, (p. 331.)

On the 3d of January, 1881, an "appeal bond" in $500, payable to James Hall McKenney, clerk, &c., was filed, conditioned to pay the *defendants' costs;* it had been approved by a judge, January 1, 1881, (pp. 331–2.)

On the 25th of April, 1881, the trustees reported (p. 335) a sale at $111,000, an immediate association of the purchasers (*being bondholders*) into a new company under a statute of South Carolina, and the execution of a deed to such company.

There was a further report as to fees, etc. (p. 337); also (June Term, 1881,) a confirmation of the sale (p. 353); an appeal therefrom in open court; a confirmation of the report as to fees, &c. (p. 355).

At October term, 1882, of the Supreme Court of the United States, the record was allowed to be withdrawn "for correction," and thereupon at June term, 1883, of the circuit court, amendments were allowed, and an appeal bond tendered, approved and accepted, September 13, 1883, (pp. 356, &c.)

The inadvertence in supposing that the bond for $500 to Mr. McKenney, in January, 1881, was an appeal bond, will be regarded here as having been cured by the subsequent bond approved in September, 1883. The former bond was given in good faith, having been *approved by the judge*, a circumstance not called for in a simple bond to the clerk: Observe also its amount. As matter of fact, the gentlemen below supposed that the forms in Curtis' Digest, App., war-

ranted that form as proper *in appeals taken from circuit courts.* In any case, it is submitted that the second bond would be received in this court, under the circumstances.

See in general Edmonson *vs.* Bloomshire, 7 Wall., 306, Peugh *vs.* Davis, 110 U. S., 228, and cases cited therein.

The appeals are several, so that those whose pecuniary interests warrant them in appealing are not prejudiced by the circumstance that others not so warranted appealed along with them.

For error in the decree below we assign the following rulings:

1. That the plaintiffs have a lien upon the road, &c., as as against the appellant contractors:

2. That the lien of the appellant contractors is subordinate to that of the plaintiffs:

3. That Inman, trustee, director, and holder of collateral, was not ordered to account for the 35 per cent. upon $210,900 trust funds in his hands, being the value of certain county bonds held by him as collateral beyond the amount which, at a private sale to him by the president of the S. & A., he paid for them (pp. 78, 79):

4. That the decree was in favor of the plaintiffs, not of the defendants.

Before discussing these assignments we will submit the conclusions which are to be drawn from the record as to the comparative dates of the mortgage, upon one side, and of the contracts and liens upon the other.

(*a.*) As to the date of the execution of the mortgage, we submit that it appears from the bill and the evidence before the referee that the mortgage was not, as reported, "duly executed" upon the 1st of October, 1876; and that it was not so executed until September, 1878.

From the year 1798 until the present day the law upon the subject of conveyances of land in North Carolina by corporations has been as follows:

"Any corporation may convey lands and all other property which is transferable by deed, by deed of bargain and sale, or other proper deed, sealed with the common seal, and signed by the president, or presiding member or trustee, *and two other members of the corporation*, and attested by a witness." Rev. Code, (1854,) p. 137, sec. 22; Code of N. C., (1883,) p. 269, sec. 685.

It is to be gathered from the copy of the mortgage appended to the bill (last paragraph, p. 18) that the signatures of the two "directors," (allowing that they were "members,") were not regarded as necessary thereto, and their signatures *after* the attest of the witness is to the same effect. It seems plain that *the date* of the deed, which in terms extends to that of the signatures of the president and secretary and treasurer, does not extend to that of the "directors," and, therefore, that there is no evidence or presumption upon the face of the mortgage *when* the directors did sign. The same presumption arises from its *proof* (p. 19) on the 20th of June, 1877, by Cofield, a subscribing witness, which was according to the South Carolina law, and by that of the *acknowledgment* (only) by Duncan before the Commissioners for North Carolina (p. 19.)

These presumptions are confirmed by Duncan's evidence, on p. 98, near bottom; and see Connor's uncertain statement, p. 154, &c., and the conclusion of the referee, p. 76, bottom.

We submit, therefore, that no deed for lands in North Carolina by a corporation can be said to have been executed until signed by two "members," besides the president; and that all such signatures must be attested; and that the signatures of the two members in the present case probably were not made until just before September, 1878, as found by the referee; or if the halting memory of the witness Cannon is

to be relied upon, not until just before the registration in December, 1877; *that registration however not extending thereto.*

We also submit that these have never been duly *attested* within the meaning of the statute, the *signatures* of the witnesses attesting only the preceding signatures, whatever their *oral testimony* as to matters subsequent to such signing by themselves may do.

In the same connexion we submit that inasmuch as under the statute the signatures of the "two members" are necessary to convey the estate of the corporation, the argument in Kerns *vs.* Foster, 4 Jones (N.C.), 226, viz, that the signature of a wife affixed to a deed after its delivery by her husband does not divest her estate in land conveyed by that deed,—applies as well where the signature is necessary to convey the land of another.

Upon the whole the mortgage was executed and first registered in accordance with the laws of *South Carolina*, and afterwards was attempted to be patched up so as to answer for land in *North Carolina*.

Supposing the attest good (which is however denied),—*as a deed valid for North Carolina land* the mortgage does not antedate in execution December, 1877, and probably not September, 1878; and its earliest valid *registration* in North Carolina, therefore, was November 22, 1878.

(*b.*) The appellants who are supposed to have a standing in this court are as follows:

1. *Buncombe County*, a stockholder to the amount of $100,000, in a corporation whose bondholders have a decree for the proceeds of property, worth $111,000, or more.

2. *Fry & Deal*, having a claim for $6,543.80 and interest, for work and material upon a building in Polk county, under a contract made June 2d, 1877.

3. *Rice & Coleman*, whose claim is $22,935.23 and interest, for work, &c., upon the road in Henderson county under a contract made prior to October 1, 1876.

4. *E. Clayton*, whose claim is for grading, &c., under two contracts, (one for North Carolina and one for South Carolina,) antedating October 1, 1876, and amounts to $26,977.92 and interest.

Buncombe county is interested in having Inman account for the county bonds in his hands.

The others have claims under contracts which antedate the execution of the mortgage.

The North Carolina statutes, important in this connexion are (1), one which prescribes the conditions upon which corporations may execute mortgages; (2), another which regulates liens for work done upon real estate; (3), a third which concerns the registration of mortgages in general; and (4), the charter of the Greenville and French Broad Railroad Company and an amendment thereof; as follows:

1. Act of 1872–'3, ch. 131, entitled, An act to regulate mortgages by corporations and sales under the same, Laws of N. C., &c., p. 215; see also Battle's Rev., p. 270, for section 3, which is thought to be all that is materlal here:

SECTION 1. *The General Assembly of North Carolina do enact*, That if a sale be made under a deed of trust or mortgage executed by any company on all its works and property, and there be a conveyance pursuant thereto, such sale and conveyance shall pass to the purchaser at the sale not only the works and property of the company as they were at the time of making the deed of trust or mortgage, but any works which the company may, after that time and before the sale, have constructed, and all other property of which it may be possessed at the time of the sale other than

debts due to it. Upon such conveyance to the purchaser the said company shall, *ipso facto*, be dissolved, and the said purchaser shall forthwith be a corporation by any name which may be set forth in the said conveyance, or in any writing signed by him and recorded in the same manner in which the conveyance shall be recorded.

SEC. 2. The corporation created by or in consequence of such sale and conveyance shall succeed to all such franchises, rights, and privileges, and perform all such duties as would have been had or should have been performed by the first company but for such sale and conveyance, save only that the corporation so created shall not be entitled to the debts due to the first company, and shall not be liable for any debts of, or claims against, the said first company which may not be expressly assumed in the contract of purchase; and that the whole profits of the business done by such corporations shall belong to the said purchaser and his assigns. His interest in the corporation shall be personal estate, and he or his assigns may create so many shares of stock therein as he or they may think proper, not exceeding together the amount of stock in the first company at the time of the sale, and assign the same in a book to be kept for that purpose. The said shares shall thereupon be on the footing of shares in joint stock companies generally, except only that the first meeting of the stockholders shall be held on such day and at such place as shall be fixed by the said purchaser, of which notice shall be published for two weeks in a newspaper.

SEC. 3. When such corporation shall expire or be dissolved, or its corporate rights and privileges shall have ceased, all its works and property and debts due to it shall be subject to the payment of debts due by it, and then to distribution among the members according to their respective interests; and such corporation may sue and be sued as before for the purpose of collecting debts due to it, prosecuting rights under previous contracts with it, and enforcing its liabilities and distributing the proceeds of its works, property, and debts among those entitled thereto: *Provided*, That all debts and contracts of any corporation, prior to or at the time of the execution of any mortgage or deed of trust by such corporation, shall have a first lien upon the property, rights, and franchises of said corporation, and shall be paid off or secured before such mortgage or deed of trust shall be registered.

SEC. 4. The provisions of this act shall not apply to any company in which the State of North Carolina has any interest.

SEC. 5. This act shall be in force from and after its ratification.

Ratified the 1st day of March, 1873.

2. Acts of 1868–69, chs. 117 and 206, (Battle's Revisal, p. 563.)

Ch. 206, Sect. 1. Every building built, rebuilt, repaired, or improved, together with the necessary lots on which said building may be situated, and every lot, farm or vessel, or any kind of property not herein enumerated shall be subject to a lien for the payment of all debts contracted for work done on the same, or materials furnished.

Ib., Sect. 3. Any mechanic or citizen who shall make, alter, or repair any article of personal property at the request of the owner or legal possessor of such property shall have a lien upon such property so made, altered, or repaired for his just and reasonable charge for his work done and material furnished, and may hold and retain possession of the same until such just and reasonable charges shall be paid; and, if not paid, &c., &c.

Ib., Sect. 4. All claims under two hundred dollars may be filed in the office of the nearest magistrate; if over two hundred dollars, in the office of the superior court clerk in any county where the labor has been performed, or the material furnished; but all claims filed shall be in detail specifying all materials furnished or labor performed, and at what date it was performed, or material furnished in case of contract or otherwise. If the party interested make a special contract for such labor performed, or if such material and labor are specified in writing, in such case, it shall be decided agreeably to the terms of the contract, provided the terms of such contract do not affect the lien for such labor performed as materials furnished.

Ib., Sect. 9. The notice of the lien shall be filed as hereinbefore provided at any time before or within thirty [1876–7, ch. 53, *sixty*] days after the performance and completion of the labor, or the final furnishing of the materials, or the gathering of the crop.

Ch. 117, Section 7. Proceedings to enforce the lien created

must be commenced in the courts of justices of the peace, and in the superior courts, according to the jurisdiction thereof, within six months from the date of filing the notice of the lien.

Ib., Section 9. Upon judgment rendered in favor of the claimant, an execution for the collection and enforcement thereof shall issue in the same manner as upon other judgments in actions arising upon contracts for the recovery of money only, &c., &c.

Ib., Section 12. All liens created by this chapter may be discharged as follows:

[1. By filing a receipt with the justice or clerk.

2. By depositing with them the money.

3. By an entry on the lien docket, dismissing the claim, or giving judgment against claimant.]

4. Py a failure of the claimant to commence an action for the enforcement of the lien within six months from the notice of lien filed.

3. The law of North Carolina as to the registration of mortgages is as follows, (Rev. Code, 1854, p. 245, sec. 22):

"No deed of trust or mortgage for real or personal estate shall be valid at law to pass any property, as against creditors or purchasers for a valuable consideration from the donor, bargainer, or mortgagor, but from the registration of such deed of trust or mortgage in the county where the land lieth; or, in the case of personal estate," &c., &c.

This has been the law since the year 1829. (Code of N. C., 1883, vol. 1, sec. 1254.)

For the interpretation of this act, (so familiar in North Carolina,) it is only necessary to quote the case of Robinson *vs.* Willoughby, (70 N. C., 358, decided in 1874.)

In that case one Christenbury made what was essentially a mortgage of land to one Robinson in December, 1865, and this was registered February 8, 1869. In 1867 Christenbury sold the same land to Willoughby by a deed registered in same year, and Willoughby went into possession. There

was evidence that before the time of his purchase Willoughby was informed that the land belonged to Robinson.

Upon the circuit, the presiding judge held that such notice would invalidate the purchase. Upon appeal, the following short opinion and judgment were rendered:

READE, J.:

"Prior to 1829 it was settled by the authority of elementary writers, and by the decisions of our own courts, that an unregistered incumbrance would be upheld by the courts of equity against a subsequent registered incumbrance or conveyance with the notice of the former, and that creditors and purchasers for value were affected by notice of prior equities, and that such notice might be proved by parol. And such is the law now, except in regard to deeds in trust and mortgages, which, though good between the parties, are void both in law and equity against creditors and purchasers for value unless and until they are registered, and then only from and after such registration.

"In 1829 an act was passed declaring that 'No deed in trust or mortgage * * * shall be valid at law to pass any property as against creditors and purchasers for a valuable consideration, * * * but from the registration,' &c. (Rev. Code, chap. 37, sec. 22.)

"Since that statute the decisions have been uniform, that deeds in trust and mortgages are of no validity whatever as against purchasers for value and creditors unless they are registered; and that they take effect only from and after registration, just as if they had been executed then and there. (Fleming *vs.* Burgen, 2 Ired. Eq., 584; Leggett *vs.* Bullock, Busb., 283.)

"It is not necessary that we should consider the other points made as to the sufficiency of the notice, because no notice, however full or formal, will supply the want of registration.

"But note, this is only in regard to deeds in trust and mortgages. In regard to other prior equities and notice, the doctrine remains as before 1829. And note, also, that there is no allegation that the plaintiff was prevented from having this deed registered by the fraud of the defendant.

"There is error; judgment reversed."

The same rule was afterwards applied where the alleged *notice* had been given by a *defectively* registered deed.

Todd *vs.* Outlaw, 79 N. C., 235, A. D. 1878.

In Hafner *vs.* Irwin, 4 Ired., 529, (a leading case in North Carolina,) it was said by RUFFIN, in a contest (A. D. 1844) betwixt creditors and bargainees under a deed in trust: "A creditor must establish his debt by judgment before he can raise the question of the validity of a conveyance made by his debtor. As a general creditor by contract he has no right to the property, nor lien for the immediate satisfaction of his debt. He must, therefore, proceed to judgment and execution before he can bring into controversy at law the liability of the property to pay the sum recovered by him."

[The citation of this doctrine here is only *ex abundanti;* to show what is thought to be the even superfluous strength of the claims of Fry & Deal and Rice & Coleman, whose statutory liens having attached to the *res* conveyed by the mortgage at all events before the registration of the latter, are effective within the principle of the above proposition.]

4. The North Carolina statute which incorporated the Greenville and French Broad Railroad Company consists of twenty-nine sections, of which only those copied below seem to have any relevancy to the present contention:

"SECTION 1. That for the purpose of establishing a communication by railroad from some of the railroads now built or in the course of construction in South Carolina, along the French Broad Valley, across the western part of this State, so as to effect a direct communication between all of said roads in South Carolina and the East Tennessee and Virginia railroad in East Tennessee, the formation of a company is hereby authorized, which, when formed, shall have corporate existence in each of these States aforesaid, and have all the rights, privileges, and immunities hereinafter granted."

Section 2 ["for the purpose of creating the capital stock"]

names commissioners in Tennessee, North Carolina, and South Carolina.

Sections 3 to 26 inclusive [name the company, as above, and make the usual provisions for organizing and conducting it.]

"SEC. 27. That the said company shall be entitled to all the rights and privileges therein granted in each of the States of Tennessee, North Carolina, and South Carolina, whenever said States respectively pass an act similar to this, so that this act of incorporation shall become and be in force in each and every of the States aforesaid: *Provided*, This State may at any future time cross the same, or connect therewith at any one or more points any other road, at the discretion of the General Assembly.

"SEC. 28. That the said Greenville and French Broad Railroad Company shall have power to borrow on the credit of said company any amount they may see fit, not exceeding two millions of dollars, and may give a mortgage or lien on said road, or any other portion thereof, which money shall be expended only in the construction of said road: *Provided*, That nothing in this act contained shall be so construed as to impair in any manner vested chartered rights of any turnpike company over which said railroad may be built without a reasonable compensation, to be ascertained in the same manner provided for the condemnation of land."

Section 29 [makes the act a *public* one.]

Laws of N. C., (1854–5, "*Private*,") pp. 269, &c.

This charter was amended by act of 1874–'75, ch. 27. (Laws, &c., of that session, p. 23. All of that which seems material here is the recital):

"Whereas the Greenville and French Broad Railroad Company of North Carolina, and the Spartanburg and Asheville Railroad Company of South Carolina have, in pursuance of the laws of North and South Carolina, been consolidated into one company, under the corporate name of the Spartanburg and Asheville Railroad Company; and, whereas, it is expedient to repeal some of the restrictions contained in the charter of the Greenville and French Broad Railroad Company:"

[Enacts three sections unimportant here.]

Recurring to the above assignments of error, we submit that—

1, 2. The plaintiffs have no lien upon the property as against, or which is not inferior to, that of the appellant contractors.

1. For this the contractors rely, in the first place, upon the proviso to section 3 of the act of 1872–'3, given above.

The evident policy, and the language, of that act show that it covers the present case exactly.

At the session when that act was passed a "revisal" by William H. Battle of the laws of North Carolina, theretofore ordered, was enacted. That "revisal" included *per se* all public laws passed before that session, and reported to and accepted by that Legislature. The act which ratified it also provided that "in the volume [which the reviser was thereby authorized to publish] shall also be published the acts of a public or general nature passed at this session and not included in the 'revisal,' incorporating the same as far as practicable into the chapters under the appropriate titles."

It seems plain that by these words the reviser was not entrusted with power to *change* any law of that session, either directly or *indirectly, ex. gr.*, by placing it in any chapter the arrangement or title of which would affect its construction, as originally enacted. *He had, as indeed he could have, no legislative power!* Such work, performed after the adjournment of the Legislature, and never thereafter formally passed upon by statute, was clerical merely.

This obvious remark meets an argument, made below, founded upon the arrangement of the revisal, an argument which also otherwise seems strained, *ex. gr.*, because the com-

panies referred to in the 49th section of the chapter in the "revisal" where this proviso is located *are railroad companies*, almost, if not quite, exclusively.

Moreover, in Sykes *vs.* Bladen Co., 72 N. C., 34, the court said, *generally*, of Battle's Revisal: "Where the language of existing acts of assembly is changed in that book, no force can be allowed to the change." And see, to like effect, 72 N. C., 469; *Ib.*, 605; 75 N. C., 219; 76 N. C., 64.

All the contracts in question were entered into, therefore, before the EXECUTION of the mortgage, September, 1878, [or, Dec., 1877,] and long before its *registration*.

The mortgage and its registration, therefore, are invalid as against them, by virtue of the above act of 1872.

See Fox v Seal, 22 Wall. 424.

2. *Again*, the lien law of North Carolina, by virtue of the statute above quoted, appears to be to the same effect. The words of the statute plainly cover the sort of claims which the defendant contractors, &c., set up. Its provisions are obviously broader than that of the constitution of the State which made it *imperative* upon the legislature to provide "for giving to mechanics and laborers an adequate lien on the subject-matter of their labor." Act XIV, sec. 4 (1868). This language, of course, did not forbid the legislature from going farther and providing liens for other people.

The statute has not yet received an authoritative construction from the supreme court of the State. It is true that in Whitaker *vs.* Smith, 81 N. C., 340, that court seem disposed to hold that the words of the statute mean no more than that of the constitution. But the discussion upon that point was then superfluous, the case before the court being that of an "overseer," whose "services," as they were called in his notice of lien, were not "work done *on*" the farm under his superintendence, within the provisions of the statutes upon lien, above.

In the absence of a State decision to the contrary, it seems

that contractors and material men are plainly within the provisions of the above statute, even although not mechanics or laborers. Phillips, *Liens*, &c., ch. 5.

Besides, even if the supreme court of North Carolina had made such a ruling, it could not have affected the rights of *previous* contractors, under the well-considered doctrine of this court announced in Burgess *vs.* Seligman, 107 U. S., at pp. 33–4.

In the meantime, under the theory of the plaintiffs, it was unnecessary for the claimants of a lien to *proceed* under the State law at any time after a receiver had been appointed in the present case;—indeed after the filing of the bill—the Federal court being asked therein to administer all liens. See, in connection with this, the case of Rice and Coleman; contract ended April 15, 1878, and lien filed June 14th, 1878, (p. 162;) injunction, October 30th, 1878, p. 28.

I also add that:

(*a.*) *The statute of* 1872–'73 *is not retrospective* in its application to a mortgage made several years thereafter by the S. & A. Co., because—

1. *The S. and A. Company originated in the consolidation of* 1874.

R. Co. *vs.* Georgia, 98 U. S., 359, &c., &c.

2. If this could be otherwise, then the question of retrospectiveness here is to be settled by reference to the date of the act upon which the statute operates, not to that of the beginning of the life of the person who did the act. The Greenville and French Broad Railroad Company was chartered with a clause which enabled it in general to make a mortgage, without specifying or defining particular (say) *police* circumstances which *alone* should be needed to make it valid. If even this had been done, it may be doubted whether it would have bound future legislation in exercise

of like powers. However, the case here is very different from that just supposed. Considering the generality of the charter of the Greenville and French Broad Company in this respect, it seems that if the legislation before us be *retrospective*, then no new law punishing crime can constitutionally operate upon future offenses when committed by persons coming *in esse* before its date.

(*b.*) Such creditors of a corporation as are also stockholders therein do not incidentally to their latter character occupy a fiduciary relation thereto, or to other creditors not stockholders. Such different classes of creditors deal with each other equally *at arm's length*.

Nor is there any circumstance in the record to give rise to an *estoppel in pais* against the contractors. Mere silence, or mere ordinary participation in the functions of stockholders, conveys no intimation to parties who may afterwards become creditors that those thus silent or thus participating may not in some other *bona fide* character (i. e., as creditors, &c.) ransack their title under the transaction, *ex. gr.*, as here, by competition under legal right by lien; or by alleging "*præpostera* conveyance or registration. Nor, besides, as is necessary in any case to such estoppel, is there here either *allegation* or *evidence* that the bondholders in giving credit or in taking bonds, *knew* of, much more *relied* upon, such silence, &c., by the contractors in their character as stockholders.]

Under one or other of the above suggestions, therefore, if not indeed under both of them, it is submitted that the bondholders have no lien as against, or which is not subordinate to, that of the defendant contractors.

See also Brooks *vs.* Railway Co., 101 U. S., 443.

3. Inman, who was a fiduciary of the company, both *generally* as director and trustee of all its trusts, and *specially* as having in his hands as collateral certain county bonds belonging to the S. & A. Co., shows no title to such bonds as

owner thereof, which is not subject to be disallowed by his *cestui que trusts* at their simple discretion. He is, therefore, still bound to account for these, and, upon the state of the record, is chargeable with 35 per cent. upon $210,900, *i. e.* $73,815 and interest. Thomas *vs.* R. Co., (and cases cited therein,) 109 U. S., 522.

After the company became insolvent without having exercised this discretion, its exercise devolves upon those who are interested in its assets.

The property sold by the court was purchased by parties to this suit and contention, for $111,000 (p. 335). Their debts, with the receiver's certificates, amounted to some $373,787.06 (p. 86). Upon page 346 Mr. Thompson, of counsel below and a member of the "purchasing committee," says that it was agreed by that committee that the road should not go to any other purchaser for less than $300,000, and perhaps $400,000. Under the terms of the decree an outsider could not compete with these bidders, unless the assets were worth more than $373,787.06. In the present state of the record there is a probability that, including the amount due from Inman as above, the assets had a market value of $475,000, which would have allowed the appellant contractors probably the whole of their claims. This gives to the contractors an interest in having Inman made to account.

The facts of this transaction are reported upon page 78, and no exception is taken thereto by Inman (see p. 288).

We submit that the old and excellent principle, *once a mortgage always a mortgage*, is applicable here.

Colebrooke on Collateral Securities, §§ 126 and 332.

Although their shrewdness may have prevented the fiduciary and their agents in this case from being made liable in other respects than as above, it is pertinent to remark here that the record shows that they have been particularly *good* to one another; preserving, at the same time, a very cold shoulder for builders of trestles, movers of dirt, and

blasters of rock—the proceeds of whose hard work they have divided amongst themselves!

4. This formal assignment seems to need no special discussion.

As regards the Motion to dismiss, and its several grounds:

1. The corrections in the amended record are immaterial, and nothing turns upon them in the argument. The persons who make up the various firms appear from the bill, and elsewhere throughout the record.

2. The presumption might well be that December term, 1880, which was in existence on the 22d of December, (p. 331,) extended to January 3d, 1881.

But this is not necessary to the case of the appellants, For their appeal was expressly allowed in open court. In the cases cited by the learned counsel, the appellants had to make out an allowance by implication, and to that the approval of the bond by the court was necessary.

See Peugh's Case, 110 U. S., cited above.

Besides, before that appeal was *returnable* into this court, another appeal was allowed in open court, the bond to Mr. McKenney being already approved and upon file.

We have already remarked upon that bond.

3. We submit the matter as to the appeal by parties having less than $5,000 in suit. It is a pity!

4. We have no more to say as to the appeal upon behalf of Buncombe county than is said above. Its appearance here is not very material. An admission of insolvency upon the part of a corporation however need mean no more than that it cannot pay the whole of its debts, including those due *to its stockholders.*

S. F. PHILLIPS,
For the Appellants.

Office Supreme Court U. S.
FILED.
DEC 16 1884
JAMES H. McKENNEY.
CLERK.

115-122

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 136.

THE COMMISSIONERS OF BUNCOMBE CO., &c.,

vs.

TOMMEY, &c.

BRIEF FOR THE APPELLANTS, &c., IN REPLY.

S. F. PHILLIPS,
For Appellants.

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 136.

THE COMMISSIONERS OF BUNCOMBE CO., &c.,

vs.

TOMMEY, &c.

BRIEF FOR THE APPELLANTS, &c., IN REPLY.

In the former brief for the appellants it was thought proper to fix the *date* of execution of the mortgage upon the theory which the North Carolina statute regulating conveyances by corporations seemed to establish. It now appears that at its February term last, in the case Bason *vs.* The Mining Co., (90 N. C., 417,) as cited by the learned counsel for the appellees, the supreme court of North Carolina has laid down a principle which fixes the date of execution of the mortgage now under consideration at *October 1, 1876*, instead of late in 1877 or 1878, as suggested in the former brief. I have accordingly struck from the former brief the passage to that effect.

The view there presented was supposed to be theoretically correct, and there was no appearance in the briefs below of a suggestion that the statute of 1798, *taken by itself*, had any

other construction; so *that* was formally presented as part of the case of the appellants.

However it was not at all important in any view of the claims of *Rice and Coleman*, and of *E. Clayton;* and as to that of *Fry and Deal* it merely remits the claimants to *one* ground of title, a perfectly plain and valid one, as is again submitted.

By reference to the former brief it will be seen that a lien is asserted for Rice and Coleman and for Fry and Deal upon *two* different grounds: 1, *an act of* 1872, regulating the action of corporations in giving mortgages; and 2, the general *workmen's lien law.* The claim of Clayton was (*not* expressly, but upon the connection of the argument,) placed entirely upon the former of these grounds. For he had not (as the others had) duly pursued his original right of *lien* by *filing* a notice, &c.

Farther, to make this clear, it will be seen that the act of 1872 forbade mortgages as against "debts and contracts" "prior to or at the time of the execution" of such mortgages. Thereupon, by referring the *execution* in question to December, 1867, or September, 1868, (under the previous theory as to *execution,*) it appeared that all three of these *contracts* [those of E. Clayton and of Rice & Coleman (which commenced *prior to Oct.*, 1876,) and that of Fry & Deal (which commenced *June 2d*, 1877)] were within the protection of the act of 1872. The rule in Bason's case, however, by fixing the execution at October 1, 1876, excludes from such protection the last of these: and only the last, [*see a Chronology for this case, and references accordingly to the record,* hereafter].

Rice & Coleman's claim therefore rests upon both of the above statutes; Clayton's upon the former only; and Fry and Deal's only upon the latter.

The learned counsel for the appellees object to applying the proviso in the act of 1872 to the *Railroad* corporation, party here, upon the ground that upon its face it appears to be connected with a statute passed in North Carolina during the year before, regulating *Corporations*, which previous statute, as is said, did not apply to *Railroad* corporations, for the reason that at the same "previous" session these were made the subject of a special regulatory act.

It is submitted that upon its face the act of 1872 is as *general* as is the subject of *Corporations-liable-to-become-insolvent*, or *Corporations-called-upon-to-give-mortgages-creating-preferences*. It provides (1) for the *dissolution* of any corporation sold out under a mortgage of "*all of its works and property;*" (2) for the vesting of its franchises in the purchaser; (3) for the distribution of the property of the defunct; and (4),— at the close of its provisions, regulates the power of giving mortgages, as here in question.

Such legislation is *all of a piece*, as it were; and nothing can be more natural than that debates upon the former portions of it (supposing, as is suggested upon the other side, that item 4, *above*, was an *amendment*) should suggest to the debaters a restriction upon the very *power* of mortgaging. Whether the details of such restriction were wisely moulded or not, or whether *it* appears as a formal *proviso* instead of a separate section, is of no importance. It is

manifestly germane to the general topic, and clearly expresses a certain view—a view which it was competent to the Legislature to hold and to enforce.

So much for the statute when taken alone. As for the *context* (in the acts of 1871) proposed by the learned gentlemen—it is submitted (1), that it is a *forced* one, and (2), that if it were allowed it would not conclude to the purpose desired: for,

1. There is no express reference in the act of 1872 to that of 1871, *ch.* 199, (*Corporations,*) as would have been natural and is most usual in cases where the Legislature intends only an amendment of some previous statute. Its terms refer to no previous legislation whatever, and, as already said, is all-comprehensive in its scope.

2. The act of 1871, *ch.* 199, upon *Corporations,* is not of the narrow operation suggested.

[Inasmuch as these acts of 1871 are relied upon by the appellees, it would perhaps be regular for them to print them at length. They are each elaborate, so that I excuse myself from supplementing any possible deficiency in this respect.] The act upon *Railroads* (ch. 138) contains 64 sections spreading over 33 pages. It is almost entirely devoted to *organization, condemnation of lands, running of trains,* and *consolidation.* Section 10 gives in general terms power to borrow money, issue bonds, and secure the same by mortgage. The other act of 1871 (ch. 199) is entitled "An act to enable any persons, not less than three, to become incorporated, and to regulate such *and other corporations.*" By its title, therefore, it may contain regulations of the conduct of

railroad companies not thereunder incorporated. And so also, equally, might an act even expressly *amendatory* thereof—which the act of 1872, as has been said already, is *not*. Some expressions in this act, denoting its objects, are, "All corporations formed under this act," (sec. 10, &c.); "No corporation formed under this act (except railroad companies)," (sec. 28); "All corporations (except railroad corporations)," (sec. 32); "Every corporation having a capital stock divided into shares," (sec. 19). Therefrom it appears that whether the provisions of this act operate upon railroad corporations—created by it *or otherwise*—is a matter of construction for each case, and is not to be decided merely by their being found therein. It is evidently in some respects *general*.

I repeat, therefore, that the act of 1872 is not specially connected with the act of 1871 upon *Corporations;* and that if it were the conclusion therefrom would not be that for which the appellees contend; and further, that the obvious *policy* of the act of 1872 covers all kinds of corporations.

In reply to the observation that at the session of 1872, &c., *special* statutes were passed giving to railroad companies power without limitation to make mortgages, &c.;—as going to show that the proviso in question was not intended to govern these, it seems sufficient to say that general expressions like those relied upon here to exclude limitation are never held to conflict with police laws which purport to regulate the powers thus generally given. The *general* provision does not operate by way of exception to the police requirement; but the latter indicates the condi-

tions upon which alone, in the interests of society, such generally given power is to be exercised.

I may add that the substance of the proviso to the act of 1872 has been re-enacted with changes, and remains part of the general public law of North Carolina. These changes have been suggested by subsequent observation, probably. *Here*, however, of course, we are not concerned with *these*, but only with the form of legislative intention in force at the time of the transaction in question.

Observing upon what is said by the learned counsel (p. 11) as to the vested right to borrow money, I may say that such rights vested in the Consolidated Company only in 1874, and not (by *relation?*) in 1855. There is no question made here as to the new company having the rights previously vested in the old, but only as to the *time* at which such possession commenced. If the present Spartanburg and Asheville Railroad Company originated in 1874, how can its vested rights antedate 1874? In the Georgia R. Co. case (98 U. S., 359) (cited by the learned counsel) it was held that a company which originated in *consolidation* was bound by a general statute, (rendering charters repealable,) passed after the date of the charters of the original companies, if before that of its own; even although so long as they existed, its application to them would have *impaired the obligation* of their charters. (See Greenwood *vs.* Freight Co., 105 U. S., 13.)

That is the very state of facts here.

It has seemed apropos thus to reply to a point much insisted upon for the appellees, although as the proviso to the act of 1872 seems *plainly a police regulation*, its operation upon private rights is in no case an *impairment* thereof, and therefore is, in general, applicable even to previously existing corporations. And equally, as has been submitted, no *general* language in subsequent charters will except such companies from its operation.

Replying to what is suggested upon the matter of estoppel *in pais*.

The state of facts in this respect against several of the appellants is as follows:

When the mortgage upon behalf of the bondholders was authorized by the stockholders these were present and voted for it. At that time they were also contractors. None of the appellants are shown to have known of such presence or vote, or to have relied upon it. As contractors such stockholders at the time of such voting had a conditional inchoate legal interest in the property so ordered to be mortgaged, which, as developed afterwards, they now propose to enforce against such mortgage.

This statement, as is submitted, removes all semblance of making a case of estoppel against the contractors: because,

1. It is fundamental to such estoppel that the party setting it up must have known of, and acted upon, the *voting*.

2. There is no appearance of harm done to the bondholders, for the subsequent work, because of which these

contractors claim a lien, has probably added more value to the property mortgaged than is to be deducted in payment therefor; and in the meantime the statute which intervenes in such a state of things to secure the *payment* by a lien, in the light of first principles, *harms* nobody.

The contention that an equitable estoppel operates thus to turn what would be mere compensation to a contractor into profit to a bondholder is inadmissible. So far as the money lent by the bondholders has actually gone into the pockets of contractors, the former have already received the satisfaction for which they contracted; *i. e.*, in *an improved property partly paid for.* So far as the contractors have expended means beyond what they have been paid for, the mortgaged property has been rendered more valuable to the bondholders *without an equivalent* upon their part. This no doubt is the argument upon which recent legislation, all over the land, creates liens for those who *do work* upon property. In the present connection it is adverted to in order to show the absence of any foundation in the nature of things for the application of estoppel.

3. Stockholders in the ordinary transaction of corporate business pledge only their corporate interest and character: *ex. gr.*, as in Hotel Co. *vs.* Wade, (97 U. S., 13,) where by voting virtually to borrow money, under mortgage, of *directors*, they were estopped to question the validity of the mortgage. They remain free to enforce all their rights and interests then existing or afterwards arising under law against the company, and *therefore* against all who claim through or under the company.

The liens in question are *statutory*, and create legal rights, so that the doctrine of *notice*, as commonly applied to affect equitable liens, has no relevancy.

The contention that under the act of 1872 contractors, &c., must have reduced their claims to *judgment* before being authorized to question a mortgage, is to say that the act is a *nullity*, as it is plain (former brief) that all creditors had that right in North Carolina *before*.

S. F. PHILLIPS,
For Appellants.

CHRONOLOGICAL TABLE.

1. Charter of Greenville & French-Broad R. Co. (Record, p. 2), Feb'y, 1855
2. Do. Spartanburg & Asheville R. Co. (p. 2)---- Feb'y, 1873
3. Consolidation (p. 2)---- July, 1874

4. Commencement of Clayton's contract in S. C. (folio 303)-- 1874
5. Do. do. N. C. (245, 303)-- Aug., 1875
6. Do. Rice & Coleman (244, 304) ---March [June], 1876
7. Do. Fry & Deal (239) ---- June 2, 1877

8. Execution of mortgage (42)---- Oct. 1, 1876
9. Registration thereof within N. C. (67)---- Jan. 12, 1878

10. Fry & Deal (309) were *not* stockholders upon---- Oct. 1, 1876
11. Rice, also, was *not;* Coleman was (309)---- Oct. 1, 1876
12. Clayton was (309)---- Oct. 1, 1876

Rice & Coleman finished their contract (305)---- May 1, 1878
Do. filed notice of lien (440)---- June 14, 1878
Do. were *enjoined* (90) ---- Oct. 30, 1878

Clayton finished contract (303)---- Oct., 1877

Fry & Deal finished contract (304)---- June 17, 1878
Do. filed notice of lien (156) ---- Aug. 2, 1878

Office Supreme Court U. S.
FILED.
OCT 27 1884
JAMES H. McKENNEY,
CLERK.

115-122

In the Supreme Court of the United States.

October Term 1884.—No. 136.

THE COMMISSIONERS OF BUNCOMBE COUNTY, E. CLAYTON, FRY & DEAL, ALLEN, CANNON & CO., W. P. FORTUNE, M. J. FAGG, GEORGE C. PERRIN, RICE & COLEMAN, JOHN GARRISON, AND H. H. GRAMLIN, APPELLANTS,

vs.

VINCENT R. TOMMY, THE ATLANTA ROLLING MILL COMPANY, AND WILLIAM H. INMAN AND JOHN B. CLEVELAND, TRUSTEES, &C.

Now come the appellees, by Mr. Rion and Mr. Earle, their attorneys, who appear only for the purposes hereof, and move the court, in supplement to their former motion to dismiss the appeal herein, which is ordered by the court to be heard with the merits, to consider the reasons following, to wit:

I. Because the transcript does not present a true copy of the record in this case, as fully appears from the order made by his honor Judge Dick, at Chambers, at Greensboro, on the first Monday of September, A. D. 1883, and an inspection of the record. (Record, p. 358.)

II. Because an appeal was prayed and allowed in open court at the same time the decree was entered, to wit, December Term 1880, and the appeal bond was not filed until afterwards, to wit, January 3d, 1881, and no citation has issued. And an order confirming the sale was passed

at the June Term 1881, and an appeal was prayed and allowed at the same term, (Record, p. 353,) and no bond was filled at that term, nor until September 13th, A. D. 1883, and no citation has issued. There has therefore been no citation, nor any proceeding which obviates the necessity for one.

III. The amount claimed in the appeals severally of Allen, Cannon & Co., W. P. Fortune (folio 749), George C. Perrin, John Garrison, and H. H. Gramlin and M. J. Fagg (folio 759), is insufficient to give this court jurisdiction thereof; in any event each thereof must be dismissed for this cause.

IV. The county of Buncombe was made a party as a stockholder merely, and has no separate interest. A stockholder of an insolvent corporation can have no interest which will sustain an appeal, and this must be dismissed.

I.

The transcript has been altered—not conformed to the record.

In Masterson *v.* Herndon, (10 Wall., 416,) there was a joint decree against Maverick and Herndon, from which Herndon desired to appeal; and in his petition he recited that Maverick refused to join him in appeal. But as this did not otherwise appear of record, the court dismissed the appeal, and in doing so stated that "there should be a written notice and due service, or the record should show his appearance and refusal."

Section 1005 of the Revised Statutes was enacted after this decision; and whilst most liberal in the matter of mere technical amendment, there is an express limitation as to this material matter. Let me analyze it: "The Supreme Court * * * allow an amendment of a writ of error, when, &c., * * * or when the statement of the title of

the action or parties thereto in the writ is defective, if the defect can be remedied by reference to the accompanying record." * * *

Here is an express condition and limitation on the power of the court to allow an amendment when the statement of the parties thereto is defective, and that condition is that the transcript may be (is susceptible of being) *corrected by the record.* And that cannot be done in this case.

When the former solicitor of the appellant filed his brief, relying on section 1005, being conscious of his inability to bring himself within the condition for amendment, he, on April 19th, 1883, obtained leave of this court "to withdraw the original transcript of record filed in this court in this cause for the purpose of correcting the same;" and this notwithstanding the court had postponed the motion to dismiss, to be heard with the merits, and allowing in the meantime a *certiorari* to the appellant.

A *certiorari* was not what was wanted. That would only bring up a record which *then* existed. A writ was needed by which a record could be made. One of that kind was invented. The district judge at Chambers, at Greensboro, made an order allowing an appeal bond to be filed "as of the last term of the said court at Charlotte;" and in the absence of the original record in the same cause, a transcript thereof being present and before the court, it was also ordered "that in each and every instance in the record in said cause, and in the transcript thereof sent to the Supreme Court of the United States on said appeal, the clerk of said Circuit Court of Charlotte insert certain names wherever certain other names appeared"; and this order was ordered to be entered "on the minutes of the court of equity as of the last June Term of said court at Charlotte."

This, we suppose, is an order "*nunc pro tunc.*" It presents a grand indifference to time and superiority over space. A record completed in 1880 is lying dormant at

Charlotte, but a transcript of it at Greensboro, under the name of correction, is mutilated and interlined from end to end. These are the facts of record. I shall not argue them.

Unless these proceedings can perfect the case of the appellants, the rule is conclusive. In The Protector, (11 Wall., 82,) the Commissioner dismissed the appeal because it was taken in the name of William A. Freeborn & Co., and it did not appear in the proceedings *on appeal* who composed the company, though it did in the libel. Mr. Justice Nelson, speaking for the Commissioner, said this had been the law since Deneale *et al. v.* Stumps, Executor, 8 Peters, 526, and the writ cannot be amended.

In Pearson *v.* Yewdall, 95 U. S., 294, the court says that the right to amend the writ under section 1005 of the Revised Statutes is not absolute, and refuses it.

II.

The appeal was not perfected by giving bond, and no citation has issued.

We do not make any question as to whether the appeal should have been taken from the decree of sale for foreclosure or the order confirming the sale. Perhaps either would be sufficient to bring up the whole case, if perfected in accordance with the requirements found necessary for the orderly administration of justice.

But certain it is that both appeals cannot stand.

Wheeler *v.* Harris, 13 Wall., 51.

If the appellants here rely upon their first appeal, then the same was not perfected by giving the security during the term, as appears from the record; and as no citation was issued, the appeal must be dismissed, as repeatedly ruled by this court.

Sage *v.* Railroad Co., 96 U. S., 715.

National Bank *v.* Omaha, Idem., 737.

This implies some action of the court while in open session; and a bond approved by the chief justice of this district out of court, though filed during the term, is insufficient.

But if this first bond had been given during the term, it (Record, p. 331,) is wholly irregular and void, because given to James Hall McKenney. Phillips' Practice, 91; Brockett *v.* Brockett, 2 How., 238; Bigelow *v.* Walker, December Term 1870 (not reported); and Vansant *v.* The Gas Light Co., 99 U. S., 213. Appreciating the defect of this appeal, the appellants attempted to remedy it by endeavoring to perfect the second appeal, which was taken at the June Term 1881, and upon which no bond was made until September 13th, 1883, over two years thereafter, under the general *nunc-pro-tunc* relief order made at Chambers. Of course we concede that the time of giving the bond is not material if pending the appeal. It may be done as it may be directed by the court below. But to obviate the want of a citation, the bond must be given and the appeal perfected at the same term it is allowed. The appeal, therefore, must be dismissed. (*Vide* cases above cited in 96 U. S.) On page 715 (of 96 U. S.) the court explicitly shows *why* a citation is rendered unnecessary if the bond is given during the term; and in Dayton *v.* Lash, 94 U. S., 112, considers the former decisions, (those of Chief Justice Taney) as to the want of a citation, and the reason for one, when the necessity is not obviated by the perfection during the term of an appeal taken and allowed in open court.

The bond here provided for was clearly intended to perfect an appeal taken in open court June 13th, 1881, on which no citation was issued. By the very terms of the order the bond would only relate back to the June Term 1883.

I respectfully refer to the following cases:

National Bank *v.* Omaha, 6 Otto, 737.
Vansant *v.* Gas Light Co., 9 Otto, 213.
Railroad Co. *v.* Blair, 10 Otto, 661.

III.

AMOUNT LESS THAN $5,000.

As to the appeals in numbers III and IV, the inadequacy of the amount is clearly shown by the record; and where this is the case, the court will dismiss of its own motion.

Hilton *v.* Dickinson, 108 U. S., 165.

IV.

The defendant company was absolutely insolvent. And this is virtually admitted in the answer of Buncombe County (page 51), which was made a party defendant upon its own application, and now appeals.

It is also shown by evidence.

See Blakes' Testimony, folio 313.

J. H. Blassinghames, folio 871.

James H. Rion
and
Wm. P. Earle
Sol's for Appellee

115-122

Supreme Court of the United States.

October Term, A. D. 1884.

THE COMMISSIONERS OF BUNCOMBE COUNTY, ET AL,
Appellants,
vs.
V. R. TOMMEY, THE ATLANTA R. M. CO., THE SPARTANBURG & ASHEVILLE R. R. CO. ET AL,
Appellees.
No. 136.

BRIEF OF APPELLEES,

BY

HON. JAS. H. RION,
WM. E. EARLE,
10, 11 and 12 Corcoran Build'g,
For Appellees.

HON. S. F. PHILLIPS,
Solicitor General.
HON. A. S. MERRIMON,
For Appellants.

WASHINGTON, D. C.
BYRON S. ADAMS, PRINTER,
514 Eighth Street, N. W.

Supreme Court of the United States.

THE COMMISSIONERS OF BUNCOMBE COUNTY, ET AL,
Appellants,
vs.
V. R. TOMMEY, THE ATLANTA R. M. CO., THE SPARTANBURG & ASHEVILLE R. R. CO. ET AL,
Appellees.
No. 136.

Summary of the Facts.

The Bill was filed by holders of the mortgage bonds to foreclose the mortgage.

The Corporation, the trustees of the mortgage, other holders of mortgage bonds and certain parties who claimed to hold prior liens, and others who claimed to own portions of the right of way, were made parties defendant.

Buncombe County applied to the court to be made a party defendant as a stockholder, on an allegation that "its interest, as such, could be thus better represented," (Record, f. 119,) and the motion was allowed.

Other creditors, upon their own application, were allowed to become parties.

Of the defendants, most of whom appeal, only three claim a sufficient sum to entitle them to appeal.

The three claim that they hold liens superior to the mortgage, under a statute of North Carolina, which provides that the indebtedness owing by a "corporation" at the time it executes a

mortgage, shall constitute a prior lien. If this law applies to *railroad* corporations, E. Clayton holds such a lien for $3,316.87.

One of the appellants claims to have a mechanic's lien superior to the mortgage, and if he has, it amounts to $6,045.95.

Buncombe, as a stockholder, claims an accounting from Mr. Inman for the difference in the value of certain County (not mortgage) bonds subscribed to the road, at the time he bought them, and the date of the reference.

After the money and work subscriptions ($91,153.71, Record p. 108) and the County bonds were exhausted, the stockholders in a public meeting resolved, by a vote of 10,544 to 30 (Record p. 110) to make a mortgage. Clayton and Coleman were stockholders, and voted to issue the mortgage. (Rec. p. 309.) All the appellants knew of it. These bonds "had no market value, for cash," (Rec. p. 109) but some of them were exchanged for iron and freights, and some hypothecated as collaterals for loans. No interest was ever paid on any of them.

The court below held adversely to the secret statutory liens and to the mechanic's lien, and decreed a sale for fore-closure, which was made and confirmed.

An appeal was taken by most of the parties but no supersedeas bond was given.

For various irregularities in the appeals, a motion to dismiss was made and ordered to be heard with the merits. Subsequently, an amended motion and brief thereon by leave of the court was filed.

The contention below was characterized more by bitterness than reason, and several of the issues have been eliminated whilst of others only an echo remains. If the court finds that the appeal can be held as to any of the parties without doing violence to its rules, and its adjudications upon them, still all but three must be dismissed for want of jurisdictional amount, and the first question I ask you to consider is whether or not these three

Appellants are Estopped.

"Buncombe County is interested in having Inman account

for the County bonds in his hands." Page 12 of Appellant's brief.

We discuss Mr. Inman's liability elsewhere, but the appeal of Buncombe must be dismissed. Above is stated the only interest the appellant claims for her. She was made a party on her own petition, and as a stockholder *merely*. It is admitted that $554,787 of mortgage bonds of the corporation are held by valid title (Brief p. 5,); besides these are the claims of these appellants for over fifty thousand dollars, and quite an amount of indebtedness held in sums under five thousand dollars. Now if the assets of the corporation were worth the speculative valuation fixed upon them by the appellants, (Brief p. 23,) viz: $475,000, the company was totally, utterly and helplessly insolvent. Then what interest has a stockholder, qua stockholder, in this litigation? How has Buncombe County a status as an appellant here?

The other appellants, and the only ones whose claims are sufficient, severally, to entitle them to stand in this court, are Fry and Deal, Rice and Coleman, and E. Clayton.

Of these Fry and Deal *alone* claim to have a mechanics' lien, under the laws of North Carolina; but all three of these claim to have a so called "statutory lien" under the alleged law of North Carolina, as to the disposition of mortgaged property of corporations.

Before analyzing these pretensions separately, however, let us see if the appellant's solicitor is not mistaken in the matter which he walks around so gingerly as to these three clamorous claimants being estopped.

Has there not been that in their conduct which in a court of conscience precludes them from saying they have a secret lien, which is superior to the openly resolved mortgage which was executed after elaborate public, and in their presence, discussion?

Mr. Clayton admits that he knew all about the purpose to execute this mortgage; don't remember how he voted on it in the stockholders' meeting, though it is very clearly proven that

he voted to issue it. He has secured large sums of the proceeds of these bonds, and in money has been directly paid over thirty-five thousand to himself, and over ninety-six thousand to his "Company," besides twenty-two thousand seven hundred and eleven dollars in stock. "Stock" is a kind of payment not long held by railroad contractors as a rule. He also proves $2,400 of these mortgage bonds in this case. His son and agent knew all about the mortgage when he was doing the work. $23,661.05 of his claim is a balance of what accrued *after* the mortgage. Now can he, as to the balance of $3,316.87 for work done in South Carolina before the mortgage, be heard to say that he has under the laws of North Carolina a little secret lien, which he has been nursing in the dark, which is superior to the rights of those who advanced on the faith of this mortgage he helped to make, the cash he has received.

Rice and Coleman, are in the same plight. Knew of the mortgage "when we began to work." Their estimates up to the date of the mortgage amounted to $18,286.63, and the master finds that "the company paid them to that date $18,300," and this is not denied. It also appears that they (Rice and Coleman) were paid in county bonds, (at cash price,) $62,000, *after that date*, a fact specially important in connection with the principles governing the apportionment of payments. And besides he had full knowledge of the mortgage, as shown by his own testimony.

Now where is the ground for a pretext of right in Rice and Coleman, to set up any secret lien, anterior to the mortgage?

And if such pretext existed, does not their knowledge and subsequent dealings estop them from making the claim?

Fry and Deal knew all about the mortgage. "I knew the mortgage was on the road when I did the work, and before I commenced it. That was the source from which we expected to get our money in payment for what we did." They thereafter on the 2d of June, 1877, made a contract to build four trestles, and completed the work June 17th, 1878, and their demand is for this work $6,045.95. (p. 344.) Subsequently

they took a "second contract, for which they have been paid in full," (p. 344,) out of the proceeds of the mortgage. They also own $500 of these mortgage bonds. Yet they claim a statutory secret lien superior to the lien of the mortgage.

We submit that all of these claims under this alleged statutory lien are subject to the rule of estoppel.

Lord Cottenham, in the Duke of Leeds *vs.* Amherst, 22 Eng. Ch. 123, says: "If a party having a right stands by and sees another dealing with the property in a manner inconsistent with that right, and makes no objection while the act is in progress, he *cannot afterwards complain.*" Now apply this principle to the facts in this case.

These parties not only knew of this mortgage being made in contravention of their alleged rights, but looked to and accepted the fruits of it in payment of amounts due them for work on their contracts; deal in, buy and own, or receive from the corporation a portion of the very bonds secured by the mortgage, and never mention that they claim or are relying upon this secret lien. Ch. Kent in Storrs *vs.* Barker, 6 Johns, Ch. 166, says: "It is deemed an act of fraud for a party conversant all the time of his own rights, to suffer another, ignorant of that right, to go on under that ignorance, and purchase the property or expend money in making improvements upon it." In Hobbs *vs.* Norton, 1 Vern. 136, where the party sought to be estopped was at the time ignorant of his own right, the court held the fact immaterial, as "it was a negligent thing in him not to inform himself of his own title." The principle here contended for seems to be fully recognized and acted upon by this court, in Chamberlain *vs.* R. R., 92 U. S., 299.

In Chapman *vs.* Chapman, 59 Penn., 214, the court says: "*Silence* will postpone a title when one should speak out, when knowing his own rights, he suffers his silence to lull to rest instead of warning of danger."

If I am correct in the application of this wise and just

principle to this case, it is conclusive as to all of it save the Mechanics Lien, which I shall discuss later.

Statutory Lien.

The law under which this statutory lien is claimed is the proviso of Sec. 48 of Chapter 26 Battles Revisal entitled "Corporations," which is Section 3 of the Act of 1872-3. The first section of that Chapter reads as follows: "*Any three* or more persons desiring to form themselves into a private corporation for any purpose not unlawful, may file with the Clerk of the Superior Court of the County in which it is proposed that such corporation shall have its only or principal place of business, a written plan of incorporation, &c."

And Sec. 48 of that Chapter provides that "when such corporation shall expire or be dissolved, or its corporate rights and privileges shall have ceased, all its works and property and debts due to it, shall be subject to the payments of debts due by it, &c., &c.

"Provided, that all debts and contracts of any corporation prior to or at the time of the execution of any mortgage or deed of trust by such corporation, shall have a first lien upon the property, rights and franchises of said corporation, and shall be paid off or secured before such mortgage or deed of trust shall be registered."

But this chapter cannot apply to Rail Road Corporations for there is another chapter specially as to them entitled "Rail Road Corporations," the first section whereof provides that:

"Any number of persons not less than twenty-five, &c."

From the fact that the "Revisal" has a chapter on "Corporations" and another on "Rail Roads;" that section one of the chapter on "corporations" begins with a previso that "any three or more persons" may, in a certain manner, form a "private corporation," whilst in the chapter on railroads, section one begins with a provision that "any number of per-

sons *not less than twenty-five*" may organize a railroad company, would seem to be conclusive that the other provisions in the chapter on "corporations" do not apply to railroads. And,

This proviso for the statutory lien claimed, is only found in the chapter on "corporations."

The force of this argument is attempted to be broken by the statement that "the evident policy and language of that act show that it covers the present case exactly." (p. 19 Appellant's brief.)

The inevitable effect of such provision would be to destroy the value in market of all bonds secured by railroad mortgages, and the special authority to issue them, as incorporated in railroad charters, would be rendered wholly useless by such secret liens. We can hardly suppose *this* "policy" compatible with granting them.

There is a further attempt made to make this proviso of section 48 applicable to railroads by an explanation as to Battle's Revisal, and a citation of authorities to show that he was not authorized to "*change* the language of existing acts of Assembly."

He has made no "change" in this matter. We make no pretension that he can make any change.

The first of these cases cited will, upon examination, appear to decide merely that a particular act as to sheriffs was not constitutionally enacted.

The second that a law omitted from the Revisal was not *thereby* repealed.

The third is as to the same question in regard to the same Statute as that in the second case.

But as there is no change made in the language of the Statute as to these secret liens; no question of enactment nor of repeal, these cases are irrelevant.

The best explanation as to this Revisal is the law authorizing it. That language is material. It is:

"That William H. Battle be and he is hereby appointed a commissioner to collect, digest and compile all the public

Statute laws of the State, now in force or in use, distributing them under such titles, divisions and sections as he may think convenient and proper, to render the said acts plain and easy to be understood."

We are not here to criticise the discretion and judgment exercised in making "Battle's Revisal." By virtue of legislative authority he has distributed the acts "made titles, divisions and sections."

We find no provision for secret liens in the chapter on *rail roads* and for twelve years its absence appears to have been satisfactory to the General Assembly.

The view here presented accords too, with the Constitution of the State, and the other is in conflict with it.

Art. VIII, Sec. 1, provides that "Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the object of the corporation cannot be attained, under general laws."

The judgment of the legislature led it to create this railroad corporation by special act. If the legislature had intended to subject it to the general provisions of law enacted for "Corporations formed under general laws," assuredly it would have said so.

I am informed that at the same session this proviso was enacted, and before and after its ratification, six railroad charters were granted, each containing a special power to mortgage. That since then the General Assembly has gone on grinding out these charters with special provisions for mortgages in each of them. If this proviso is to be read between the lines in each of them by the commercial world, this General Assembly is a vast fraud mill.

Such an unwritten interpolation in a railroad mortgage would at a blow destroy the theory, the policy and practical effect of an unbroken line of well considered cases in this court, beginning with Aspinwall *vs.* The Commissrs. of Knox, in 21 Howard, and extending through your last volume.

If this "proviso" in the general corporation law is applicable to railroads, it is in this case, obnoxious to the objection that it is retrospective.

The power of the Spartanburg and A. R. R., to make a mortgage does not spring from nor depend upon the General Statute Law of North Carolina, of 1872-3, entitled an act "to regulate mortgages by corporations and sales under the same." The power to mortgage is derived from the special power given in the charter, which was long anterior to this act of 1872-3, consequently the power was unimpaired by this subsequent general law.

The answer to this is, that "the Spartanburg and Asheville Company originated in the consolidation in 1874. (vide appellants brief, p. 21.)

But this answer is founded wholly in error as we shall now see. It is true this court decides in the R. R. Co. *vs.* Georgia, 98 U. S. 359; that the two corporations there were dissolved, and a new one formed by their amalgamation; but before that happened or was authorized to be done, there was a provision in the General Statutes or Code, declaring that "artificial persons called corporations" were "subject to be changed, modified, or destroyed at the will of the creator."

And another, that as to "private charters hereafter granted, the State reserves the right to withdraw the franchise unless such right is expressly negatived in the charter." A similar general provision in the laws of South Carolina, known as "Sec. 41 of the act of 41" similarly controlled the court in the R. R. *vs.* Hoge, 99 U. S. 348.

But there is no analagous provision in the laws of North Carolina, to the general provision of the Code of Georgia.

In the absence of such a general provision, this court has repeatedly held, that the new or consolidated corporation retains all of the rights, powers, privileges, and immunities of either of the component corporations.

Vide Phil. and Wil. R. R. *vs.* Md. 10 How., 376.
Tomlinson *vs.* Branch, 15 Wall., 460.
Delaware R. R. Cases 18 Wall., 206.

This is the important question in this case, and I shall only present another feature of it.

For the purpose of the argument I shall assume (what I do not believe,) that the provision is applicable. Then if the contract of the contractors is severable, or payable monthly, then all they can claim is, to be paid up to the date of the mortgage. And *they have been so paid.*

If the contract is, in itself, an entire contract, then *the law severs it* upon the creation of another lien.

If A gives B a mortgage upon a tract of land to secure all future advances, and while the advances are being made, A mortgages the same land for a debt then incurred, the law severs the contract, though entire when made, and allows the lien of the first mortgage to cover only the advances made up to the date of the second mortgage. Are the contractors under the provisons of the act 1872, in any better situation than if they had a mortgage as first above described? What was due them at the date of the mortgage made by the Railroad Company is secured by the Statute, and that amount only, and this amount they have been paid.

Brinkerhoff *vs.* Marvin, 5 Johns, Ch. 326.
Truscott *vs.* King, 6 Barb., 346.
Freeman on Judgments, 397.

Mechanics' Lien.

One of the appellants, Fry & Deal, claims to have a mechanics' lien upon this road in North Carolina under the laws of *that* State, superior to the mortgage which is on the entirety in the two States.

The amount claimed is a balance of $6,045.95 on a contract dated June 2, 1877, for material furnished, constructing and

building four trestles; Nos. 9, 10, 11 and 12 all included in this amount. They allege in "their notice of lien," filed August 3, 1878, that the claim accrued "between the date of said agreement and the 17th of June, 1878." (Rec. p. 50.) Mr. Deal testifies (p. 123), "I knew the mortgage was on the road when I did the work and before I commenced it. That was the source from which we expected to get our money in payment for what we did. Mr. Fry is a mechanic and *superintended* the work."

Mr. Fry testifies (p. 141), "The firm of Fry & Deal undertook to do this work as *contractors*, and not with their own hands or personal labor."

To subject a railroad to the provisions of a mechanics' lien law, the purpose of the legislature must be established in specific terms. No general law can embrace it.

In Dunn *vs.* North Mo. R. R., 24 Mo. 493, the words "buildings or other improvements" in the statutes are held to be ample to "include bridges and culverts," but the court places the decision expressly on the ground that whilst railroad companies in some respects resemble private corporations, yet they are "organized for the public benefit," and the State "regards them as matters of public concern." "The only principle on which the legislature could have authorized the taking of private property for its construction, without the owners' consent, is that it was for public use." And the court holds that such a lien can no more be enforced against a railroad than it could be against a public building, as a State house.

In McPheeters *vs.* Merrimac Bridge Co., 28 Mo. 465, the court fully reaffirms this doctrine and seems to settle the principle. "This Bridge Co. was chartered by the State to connect with the highways of the County, to be built at or near a ferry and public roads lead to it, and though it collected tolls, it was a public bridge and therefore not liable to a mechanics' lien for work done thereon or for material furnished for its construction."

In Graham *vs.* Mt. Sterling Coal Road Co, XIV Bush. 425, the court says that railroads are not in terms embraced in the Statute, though the language may be broad enough to include them, but "we cannot by construction decide that the mechanics' lien law embraces a railroad structure, when such a construction would not only be contrary to, but ruinous to the *public interest.*"

The same Court of Appeals has repeatedly held that a railroad is an entirety and only as a whole can be subjected to a coercive sale.

The case of Brooks *vs.* Railway Co., (101 U. S. 443,) can have no bearing upon this case, for the reason that the Missouri Statute upon which it rested, gave "for labor done or things furnished, a lien on the *entire land* upon which the building, erection or improvement was made, *which has been held to include railroads*, and it shall be preferred to all other liens or incumbrances," and this court expressly declares that in rendering the decision therein, it is following the construction of the Missouri court upon a Missouri Statute. The Canal Co. *vs.* Gordon, (6 Wall, 561), is based similarly on a California Statute.

The claim of the appellant here is wholly in derogation of the common law, and the right must be very clearly shown under a Statute. It is claimed solely in the State of North Carolina. It appears fully from the Record that this road connecting with lines at Spartenburg, S. C., by its charter was "to effect a direct communication between all of said roads in South Carolina" with the East Tennessee & Virginia line in the State of Tennessee. It is the common case of the scriptural illustration of the man who builded without counting the cost, and after all means were exhausted and all negotiations had failed, along with appeals to the stockholders, the collapse came with one end of the road in Spartanburg, S. C., and the other on the side of the mountain in North Carolina, with a grade of over 300 feet to the mile. Receivers' certificates were issued to complete it to Hendersonville, the cost being $105,000 (p. 323,) where it

lacked 28 miles of making any connection. The reliable testimony of an able financier is that the bonds of the company with the road completed over this 28 miles to Asheville, would be better worth 80 per cent. than 50 otherwise. There was no market for them at 50, and more money could not be borrowed upon them as collateral. (pp. 114 and 115.)

It is not doubted that the power is inherent in the legislature, the constitution being silent, to give the laborer a lien for his work or a material-man one upon the property benefited for the material used bona fide, in its improvement. When, however, the organic law speaks upon a subject fundemental to the policy of the States jurisprudence, and as to which "abuse might unsettle the very corner-stone on which that jurisprudence rests," the scope of the terms it uses must be taken as fixing a limit to the extent to which the legislature can go. This is a safe and sound rule of constitutional construction.

Article XIV, Section 4, of the Constitution of 1868, made i the duty of the legislature to provide "for giving to *mechanics* and *laborers* an adequate lien on the subject matter of their labor."

My Friend says (Brief p. 20), of the lien law of North Carolina, "its provisions are obviously broader than that of the Constitution of the State."

If he is correct, they are unconstitutional and void, just in so far as they are broader. The terms of the Constitution are a limitation. The maxim *ex pressum facit cessare tacitum* applies and controls.

Vide Cater *vs.* Knight, 3 T. R. 442.
Smelting Down Lead Co. *vs.* Richardson, 3 Burrows, 1344; this opinion by Lord Mansfield, C. J.
Rex *vs.* Cunningham, 5th East, 478.
Brooms Legal Maxims, 8th Ed. 665 and 666.
Dwarris Stat. 712, 713.
Smith's Commentaries, Sec. 508.
C. & A. R. R. Co. *vs.* People, 67, Illinois, 77.

But the Statute is not broader than the Constitution.

It has been construed by the Supreme Court and expressly limited to *mechanics and laborers.*

It is true that in the case of Whitaker *vs.* Smith (81, N. C., 340), it was the "services" of an "overseer" which were involved, and the court held they were not "work done." "Mr. Fry is a mechanic and *superintended* the work," says Mr. Deal.

Query. What is the difference between "overseeing" and "superintending?"

Answer. The difference between ante-bellum and post-bellum phraseology.

In this case the court decides who is a laborer. He is "one who toils, who is dependent upon his *manual* labor for his subsistence," and it cites with approbation a Pennsylvania case which holds that an "engineer" is *not* a laborer.

Mr. Fry's testimony concludes this matter.

The firm of Fry & Deal "undertook to do this work as *contractors*, and not with their *own hands* or *personal labor*."

But the Supreme Court, in the case cited, construes the terms of the Statute, and in doing so, went into the reason of it.

"A very large proportion of the laboring population of the State had just recently been released from thralldom, and thrown upon their own resources, perfectly ignorant of the common business transactions of social life, and this provision of the Constitution, and the Acts passed to carry it into effect, were intended to give protection to that class of persons who were *totally dependent* upon their *manual toil* for subsistence."

This law was designed exclusively for mechanics and laborers.

But if this were a case within the purview of the law, the proceedings as set out in the Record, are totally inadequate to its enforcement and fatally defective.

The Statute requires that "all claims filed shall be in detail, specifying all materials furnished or labor performed, and at what date it was performed, or material furnished in case of contract or otherwise."

"Mechanics and laborers asserting a lien upon real property for their work, and claiming property over mortgagees and others who have acquired interests in the property, must furnish strict proof of all that is essential to the creation of the lien; and that requires them to prove *when* the work was commenced, the *character* of the work, and *when* it was completed."

Such a lien does not arise from a contract, but from the work itself and a compliance with the Statutes.

Davis *vs.* Alvors, 94 U. S., 545.

In Utah, besides a mechanics' lien law, there is also a Statute giving a "miners' lien law" to any person "who shall *perform any work or labor* upon any mine," &c. In Mining Co. *vs.* Cullins, 104 U. S., 176, this court holds the claimant entitled and says: "He was not a *contractor*. His services were not of a professional character, such as those of a mining engineer. He was the overseer and foreman of the body of miners," &c.

Now under the clear exposition of the law in this case, it is plain that Fry & Deal, being "*contractors*," can have no mechanics' lien. Even if they were "overseers" for the corporation, instead of merely "superintending" their own work *as contractors*, they could not have a lien, under the construction of the North Carolina law by her own Supreme Court.

Want of Status.

These three appellants are creditors, but a court was never vexed with a more pretentious claim than theirs of a lien.

Unless they have established that they have a lien, they have no status in court whereon to impeach the validity of this mortgage.

A creditor can only assert his rights as such, by obtaining a judgement which will be a lien on the property which the debtor then has, and also all which he has before that time fraudulently conveyed.

Moore *vs.* Ragland, 74 N. C., 346.

The case of Hafner *vs.* Irwin, 4 Iredell, 529, which we are told is a leading case in North Carolina, is directly in point. "A creditor must establish his debt by judgment before he can raise the question of the validity of a conveyance made by his debtor."

The Mortgage.

It should be borne in mind in the consideration of this case, that the mortgage is on a continuous line of railroad extending from Spartanburg, South Carolina, to Hendersonville, North Carolina. It is one mortgage over one piece of property, owned by one corporation. It was an indivisible whole, and whatever value it has is as an entirety. Under the decree it was sold as an "entirety" upon the principles laid down in Wilmer *vs.* The Atlanta and R. Air Line Ry. Co., 2 Woods, 447, and since adopted by this court.

The Appellant in his brief makes no question as to the validity of this mortgage in South Carolina. It is unquestionable.

There is a feature of the law applicable to it, however, to which it is material I should ask your attention.

In South Carolina such deeds are to be recorded in the office of the Clerks of the Circuit Court as Registers of Mesne Conveyances, in the Counties in which the real estate or personal property is situated. *Gen. Stats. S. C.*, 422, Sec. 2.

In South Carolina, this recording is constructive notice to the whole world, if recorded within the prescribed time from the *date of the execution* of the mortgage, and if subsequently recorded, from *the date of record*, and its priority of lien is in accordance. XVI. Stats. S. C., 93.

Till 1st of January, 1877, this time was 60 days. (*Gen. Stats. S. C.*, 422, Sec. 2.) After 1st of January, 1877, 40 days. (*XVI. Stats. S. C.*, 92.)

The record shows this mortgage was executed October 1st, 1876, and duly recorded July 20, 1877. But whilst record is

constructive notice; actual notice of an unrecorded deed or mortgage is legally sufficient.

The validity of the mortgage in North Carolina, is impeached on the ground that it is not legally executed.

The date of the legal record of the mortgage in North Carolina is material only in the event that this court should conclude—

I. That the appellants have a statutory lien; and

II. That personal notice of the mortgage is insufficient as to them.

The concurrence of these conclusions renders the date of the record of this mortgage material so as to fix the portion of the claims of Rice & Coleman, and E. Clayton, which existed at the date the mortgage took legal effect.

The power and authority of the Spartanburg and Asheville Railroad Company to make this mortgage, is not derived from any general provision of law, but rests upon a specific grant of authority in its charter.

The eighteenth section of the charter of the Greenville and French Broad Railroad Company, which is the charter of this company, provides that the contracts authenticated by the signature of the President and Secretary, shall be binding on the company *without* seal.

The charter of the Greenville and Columbia Railroad Company, which is also made the charter of this company, has a similar provision in its twenty-first section. XI. S. at L. of S. C., p. 330. And this is general law; all corporations can bind themselves under their corporate seal, properly attested, unless restricted by Statute, and that is not pretended here.

A. and A. on Corp., Sec. 191 and note.

By the general laws of the State of North Carolina, in relation to corporation mortgages, (Revised Code, Chapter 26, Section 22,) it is provided that railroad mortgages shall be sealed with the seal of the corporation, and signed by the Presi-

dent and two other members of the corporation, and attested by a witness.

It is a matter of very grave doubt as to whether this general provision of the law applies in a case, where by the very charter of the company, special provisions are made for its contracting; but the mortgage, in this case is shown by the testimony to have been executed in strict conformity with the general provision of law above cited.

It is denied by the appellant that the two directors signed with their signatures, and were witnessed, &c., &c. But the testimony of Hon. Gabriel Cannon, on page 154, is conclusive upon this point. He says that the directors signed during the session of the South Carolina legislature 1877-8. His signature is affixed as witness. By Statute that body convenes on the fourth Monday of November annually, and by a sort of common law adjourns Christmas Eve. He also testifies in the same folio, (423,) that he proved the execution of this mortgage before the Probate Judge of Polk County, North Carolina, in November 1878.

Mr. Duncan, testifies (page 155) that the two directors executed it before it was registered in Polk County *in December*, 1877, also, that it was registered in Spartanburg County, South Carolina, according to the laws in that State.

It is further objected that this mortgage was not properly registered in the counties of the State of North Carolina. It was twice registered in Polk County, the first time in December, 1877. The objection to this registration, so far as I am able to gather, is that the deed was not proven before a Probate Judge of the State of North Carolina, before registration.

If we concede that this is true, the answer to it is that on the 30th day of November, 1877, it was proven before George W. Nichols, the Commissioner of Deeds of North Carolina in South Carolina, and upon that proof it was registered in Henderson, on January 12th, 1878, and is shown by the testimony of McAden, on page 117, to have been registered in Polk County,

in December, 1877, (p. 118, folio 328) and Register Morris, (folio 33,) corroborates this statement.

Proof of a deed in one county entitles it to registration in any other in the State. (Holmes *vs.* Marshall, 72 N. C., 37.)

This mortgage, as we have seen, was proven before George W. Nichols, Commissioner of Deeds, appointed by the Governor of North Carolina, in and for the State of South Carolina, on the 30th of November, 1877, and such commissioner has *pro hac vice* the same power as a Probate Judge. (5 Jones, 481.)

We submit that there can be no question about the legality of its registration.

It was again registered, but needlessly, being proved in accordance with Battle's Revised Code, Chapter 35, Section 212. On the 28th of September, 1878, G. Cannon made a certificate before the same commissioner, George W. Nichols, as to the execution and delivery of the deed by the President and two directors, and of its execution by the two trustees, and also that he witnessed the President affix the corporate seal. On this certificate of the 28th of September, 1878, R. L. Abrams, Probate Judge of Polk County, ordered said deed and mortgage to be registered, and on the same day James N. Coins, Register of Deeds for Polk County, certifies that he did register it.

The common seal of a corporation affixed to the deed is tantamount to *delivery*, and suffices, nothing to the contrary appearing, to pass an estate in lands, although there may not have been actual delivery to the party. (Grant on Corporations, 63.) In a case decided by the Supreme Court of North Carolina, at the February term of the present year, the above general principle is quoted with approval. In this case (Bason *vs.* Mining Co., 90 N. C., 417,) the deed of the corporation was signed by the President, the seal was affixed, and attested by the Clerk, and it was probated by a Commissioner of North Carolina, in Philadelphia, Pennsylvania, and the Court says: "We think it clear from these authorities that the deed from the Gaston Mining Company, is properly executed, and it is equally manifest that the proof before the commissioner

was amply sufficient to warrant the order of the clerk for registration."

But placing the matter beyond all question the Court expressly decides that "the Statute providing that the President and two other members of a corporation shall sign its deed conveying real estate, (Rev. Code, Ch. 26, Sec. 22,) is an enabling act, and does not exclude the common law method."

This is the latest authoritative utterance by the Supreme Court of North Carolina, construing its own law.

But none other than a judgment creditor can impeach the registration of a mortgage under the laws of North Carolina, and these appellants are not such. Moore *vs.* Ragland, 74 N. C., 343.

But suppose they were judgment creditors and could impeach the registration of the mortgage. The only appellants here, the amount of whose claims severally is $5,000, are proven to have had personal notice of the mortgage, and as to them the registration was wholly immaterial.

J. A. Deal, (p. 123,) of the firm of Fry and Deal, knew the mortgage, and testifies that it was the source from which "we expected to get our money in payment for what we did."

R. L. Coleman, (p. 122,) of Rice and Coleman, knew "of the existence of the mortgage when we began to work."

Ephraim Clayton, (p. 142,) was in the meeting which authorized the issuing of the mortgage. "I have no recollection of voting, but understood that the mortgage was authorized at that meeting."

G. W. Clayton, his son and agent, (p. 121,) "I knew of the existence of the mortgage when I was doing the work."

As to Mr. Inman's Bonds,

The third Assignment of Error is:

"3. That Inman, trustee, director and holder of collateral, was not ordered to account for the 35 per cent. upon $210,900 trust funds in his hands, being the value of certain county

bonds held by him as collateral beyond the amount which, at a private sale to him by the president of the Spartanburg and Asheville Railroad, he paid for them" (pp. 78, 79, of Appellants Brief.)

It is said on page 12 of the same, that—

"Buncombe County is interested in having Inman account for the county bonds in his hands."

And on pages 22-23 of same it is argued that he is liable for the difference between their value in 1876 (50 per cent.) and at the time of the reference, 1879, (85 per cent.) amounting to $73,815.

Upon any basis of calculating the assets and liabilities of this company it was utterly insolvent.

The sale of Railroad is not impeached.

But even if you take the price to which one witness testifies, the purchasers would have run the property, it is insolvent.

Take the price at which it was sold and add to it this absurd claim against Mr. Inman, and there is a fearful margin between the sum and the indebtedness.

In view of these facts, patent upon the record, the most ingenious must be at a loss to find a combination of law and arithmetic which will give Buncombe County as a stockholder in this insolvent corporation, any interest in Mr. Inman's accounting; or any interest in this litigation; or any status in this court when its interest must amount to $5,000.

But Mr. Inman is aspersed and proposes to meet the charges fully.

Being a large owner in the Spartanburg, Union and Columbia R. R., which corporation was much interested in the building of the Spartanburg & Asheville R. R., and proved that interest by giving it material help when it could no longer get a dollar from any other source, Mr. Inman subscribed liberally to its capitol stock and became a director in it.

Before the mortgage was issued, the company owed Mr. Inman $126,245 for cash loaned and he held $210,000 of the

bonds issued to the road by the counties of Spartanburg and Union (in S. C.) as collateral.

On a settlement he bought these bonds at their then highest market value.

This, too, was prior to the execution of the mortgage of which he was trustee. If it were otherwise, his trusteeship has no connection with these county bonds.

The other debt for which he held mortgage bonds is not in dispute.

In this connection the appellants cite Thomas *vs.* R. R. Co., 109 U. S. 522. In that case, a construction company was interposed between the management to obscure the fact that the directors were dealing with themselves, and this corporation assumed the liabilities of the members of the board on their stock subscription. The whole transaction reeked with fraud. The court set aside the contract but allowed the bonds to stand as security for so much as was due the contractors upon a quantum meruit.

Mr. Duncan's integrity is unquestioned and is above question.

The sole ground on which the sale of these bonds is attacked is, that Mr. Inman was director in the defendant corporation.

He paid the market value of the bonds.

Mr. Blake, secretary and treasurer of the company testifies as follows :

"I recollect the time of the sale of the county bonds to Mr. Inman, and believe that the price realized was the best that could have been had at that time.

"The company made efforts in Charlotte, Charleston, and other places to raise money on the first mortgage bonds, and 50 cents was the best that could be done. I recollect that the president was *congratulated* by the *directors* on his action in *Charleston*. The bonds had *no market* value for *cash*.

"The legal validity of the county bonds was questioned by some persons in S. C., and their validity is now an unsettled

question, and is now in litigation in the Supreme Court of S. C." (Record pp. 108, 109.)

There is a decision of the South Carolina Court of Equity Appeals, which seems very germain to the facts of this case. In the Railroad Company *vs.* Claghorn et al., reported in Speer's Equity, 545, the directors of a steamboat company had endorsed the notes of the company and taken chattel mortgages to secure themselves. In the opinion, referring to the directors, the Chancellor says: "It was they who contracted with themselves to be indemnified by a mortgage against their liability as endorsers. * * There is, upon a superficial view, something very startling in this, if the facts be true, and they probbably are as to some, perhaps all, of the indorsers; but this alarm will cease when we take into consideration the motives and influences which operate upon men to lend their credit to assist individuals or corporations to pursue their enterprises. * * Now there is nothing, either in law or equity, which forbids a member, or even a director of a corporation, from contracting with it, and like any other individual he has a right to prescribe his own terms, which the corporation is at liberty to accept or reject; and when the contract is concluded he stands in the same relation to the other creditors of the corporation *as any other individual would under the same circumstances.*"

As to these county bonds, the *Referee* has reported:

"In 1876, the company was indebted to W. H. Inman, $126,245, and he held as collateral, bonds of Union and Spartanburg Cos., $210,000, that the company being unable to pay said debt, and Mr. Inman demanding his money, the President made a settlement with him, and in payment of his debt transferred to him the said county bonds at 50 cents on the dollar; that said bonds were *then worth only that price* in the market; that they are *now* worth 85 cents. There was no evidence introduced before me, showing that the President had any *direct authority* so to dispose of the above to Mr. Inman."

The bulk of these bonds he paid 50 cents for. (Test. p. 6.)

It is true there was proven no "*direct authority,*" but the

bonds issued to the road by the counties of Spartanburg and Union (in S. C.) as collateral.

On a settlement he bought these bonds at their then highest market value.

This, too, was prior to the execution of the mortgage of which he was trustee. If it were otherwise, his trusteeship has no connection with these county bonds.

The other debt for which he held mortgage bonds is not in dispute.

In this connection the appellants cite Thomas *vs.* R. R. Co., 109 U. S. 522. In that case, a construction company was interposed between the management to obscure the fact that the directors were dealing with themselves, and this corporation assumed the liabilities of the members of the board on their stock subscription. The whole transaction reeked with fraud. The court set aside the contract but allowed the bonds to stand as security for so much as was due the contractors upon a quantum meruit.

Mr. Duncan's integrity is unquestioned and is above question.

The sole ground on which the sale of these bonds is attacked is, that Mr. Inman was director in the defendant corporation.

He paid the market value of the bonds.

Mr. Blake, secretary and treasurer of the company testifies as follows :

"I recollect the time of the sale of the county bonds to Mr. Inman, and believe that the price realized was the best that could have been had at that time.

"The company made efforts in Charlotte, Charleston, and other places to raise money on the first mortgage bonds, and 50 cents was the best that could be done. I recollect that the president was *congratulated* by the *directors* on his action in *Charleston*. The bonds had *no market* value for *cash*.

"The legal validity of the county bonds was questioned by some persons in S. C., and their validity is now an unsettled

question, and is now in litigation in the Supreme Court of S. C." (Record pp. 108, 109.)

There is a decision of the South Carolina Court of Equity Appeals, which seems very germain to the facts of this case. In the Railroad Company *vs.* Claghorn et al., reported in Speer's Equity, 545, the directors of a steamboat company had endorsed the notes of the company and taken chattel mortgages to secure themselves. In the opinion, referring to the directors, the Chancellor says: "It was they who contracted with themselves to be indemnified by a mortgage against their liability as endorsers. * * There is, upon a superficial view, something very startling in this, if the facts be true, and they probably are as to some, perhaps all, of the indorsers; but this alarm will cease when we take into consideration the motives and influences which operate upon men to lend their credit to assist individuals or corporations to pursue their enterprises. * * Now there is nothing, either in law or equity, which forbids a member, or even a director of a corporation, from contracting with it, and like any other individual he has a right to prescribe his own terms, which the corporation is at liberty to accept or reject; and when the contract is concluded he stands in the same relation to the other creditors of the corporation *as any other individual would under the same circumstances.*"

As to these county bonds, the *Referee* has reported:

"In 1876, the company was indebted to W. H. Inman, $126,245, and he held as collateral, bonds of Union and Spartanburg Cos,, $210,000, that the company being unable to pay said debt, and Mr. Inman demanding his money, the President made a settlement with him, and in payment of his debt transferred to him the said county bonds at 50 cents on the dollar; that said bonds were *then worth only that price* in the market; that they are *now* worth 85 cents. There was no evidence introduced before me, showing that the President had any *direct authority* so to dispose of the above to Mr. Inman."

The bulk of these bonds he paid 50 cents for. (Test. p. 6.)

It is true there was proven no "*direct authority,*" but the

testimony shows that the acts of the President in this matter were *concurrently ratified* by the executive committee. Besides, the transaction was in itself *advantageous* at the time for the company; the *bona fides* is manifest, and no one entitled to complain has made complaint. It is now (1879) too late for outsiders to impeach this transaction, even should the court not hold that the *general, ex officio agency* of the *President* gave sufficient authority.

But no stronger argument is needed than a statement of the testimony.

D. R. Duncan, the President and Chairman of the Executive Committee, testifies:

"The transaction with the county bonds was done without any *written order* of the Executive Committee. A majority of the committee lived in Spartanburg (where witness lived and the transaction had). I would tell them of my acts of hypothecation after it was done, and the members of the *committee* would *approve* of it. I had *no express order* before acting. They seem to *recognize my power to act*, and to *approve* of what I reported to them I had done." (Record f. 282.)

"No concealment of any kind of any thing done. Everybody might know. Everything known to anyone who took the trouble to enquire. The sale regarded as advantageous at the time. The County bonds had been hypothecated a year before sale. The company had no funds to repay the money loaned on these bonds. The company all along straightened for funds to continue operations in construction, &c. And these matters discussed at stockholders' meetings." (Test. p. 13.)

W. K. Blake, Secretary and Treasurer, testifies: "The price realized was *the best* that could have been had at that time. The validity of these bonds, (the county bonds,) was questioned in South Carolina, and is *now*, (time of reference,) in litigation in the Supreme Court in South Carolina."

This court will recall a case decided by it during the October term of 1878, involving a set of these county bonds entitled Commissioner *vs.* Bank of Commerce, 97 U. S., 374.

As regards the motion to dismiss a word by way of reply:

The appellants relies upon Peugh *vs.* David, 110 U. S., 227.

In this case there *was a citation*, and the case is therefore inapplicable. The point in it was merely as to the power of a Justice of this Court to allow a supersedeas, under the circumstances of *that case*, and it was held that the appeal being allowed and entered by the court in session, and whilst acting judicially, a justice might under Section 1,007, R. S,. allow a supersedeas after sixty days thereafter.

I don't see how the stock in a corporation can be a *debt* of the corporation "due to its stockholders."

The motion to dismiss applies, on different grounds, to all of the appellants.

JAMES H. RION,
WM. E. EARLE,
For the Appellees.

Office Supreme Court U. S.
FILED.
DEC 15 1884
JAMES H. McKENNEY,
CLERK.

115-124

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

From the Western District of North Carolina.

No. 136.

THE COMMISSIONERS OF BUNCOMBE COUNTY AND OTHERS

vs.

TOMMEY AND OTHERS.

Brief for the Appellees.

The appellants, who by their course, claim a standing in this court, are, as set forth in their brief.

1. "*Buncombe County*, a stockholder to the amount of $100.000 in a "corporation where the bondholders have a decree for the proceeds of "property worth $111.000 or more.

2. "*Fry & Dea*, having a claim for $6.543.80 and interest, for work and "material upon a building in Polk county, under a contract made in "June, 1877.

3. "*Rice & Coleman*, whose claim is $22.935.23 and interest, for work "&c., upon the road in Henderson county, under a contract made prior "to October 1st, 1876.

4. "*E. Clayton*, whose claim is for grading, &c., under two contracts, "(one for North Carolina and one for South Carolina) antedating October "1, 1876, and amounting to $26.977.92 and interest."

For error in the decree below, the appellants assign the following rulings:

1. That the plaintiffs have a lien upon the road, &c., as against the appellant contractors.

2 That the lien of the appellant contractors, is subordinate to that of the appellants.

3. That Inman, trustee, director and holder of collaterals, was not ordered to account for 35 per cent upon $210,900 trust funds

in his hands, being the value of certain county bonds held by him as collateral beyond the amount, which at a private sale to him by the president of the S. & A. he paid for them.

4. That the decree was in favor of the plaintiffs, not of the defendants.

As preliminary to discussing these assignments of error, the appellants contend that the mortgage was not executed on the 1st of October 1876, as it purports to have been, and was not executed until September 1878, because, as they insist, it does not appear that, "two other members of the corporation," signed the deed with the president, before the latter date. To sustain this position, we are referred to the Revised Code, (1854) p. 137, sec. 22, which is as follows:

"Any corporation may convey lands and all other property which is "transferable by deed, by deed of bargain and sale, or other proper deed, "sealed with the common seal and signed by the president or presiding "member or trustee, *and two other members of the corporation*, and at- "tested by a witness,"

The very point here made by the appellants, has recently been decided adverse to them, by the Supreme Court of North Carolina, in the case of *Bason vs. The Mining Company*, 90 N. C., 417. It is there held,

1st. "That a deed of corporation, the concluding clause being, "In wit- "ness whereof the said corporation has caused this indenture to be signed "by its president and attested by its secretary, and its common seal to "be affixed," with the signatures and seal, is properly executed as a "common law deed.

2d. The statute providing that the president and two other members of a corporation shall sign its deed conveying real estate (Rev. Code, ch. 22, sec. 22) is an enabling act, and does not exclude the common law method.

The *first* registration of the mortgage was in Polk county, and the other counties, was good. Bat. Rev. ch. 35, sec. 6, 7.

Holmes *vs.* Marshall, 72 N. C., 37.

Bason *vs.* The Mining Co., 90 N. C. 417.

I.

The appellants insist that they, at the date of the execution of the mortgage, to-wit: October 1st, 1876, as contractors and creditors of the corporation, had a statutory and prior lien upon the

property conveyed, by virtue of the act of 1872–3, page 215. (Also see Battle's Revisal, Ch. 26, Sec. 48) A correct copy of this Act is set out in appellant's brief, p. 12–13, to which we refer.

As preliminary to an examination of the legal effect of that statute, it is proper to advert to certain facts disclosed in the printed record of this case, and the bearing they have upon the claim of statutory lien, set up by appellants.

FIRST, THE CLAIM OF *Fry and Deal.*

They knew of the existence of the mortgage on the road, before they commenced work, and while they were doing the work, and one of them (Deal,) owned stock in the road. *Deal*, frankly testified:

"I knew the mortgage was on the road, when I did the work and be-
"fore I commenced it. That was the source from which we expected to
"get our money in payment for what we did" Printed Record p. 123.

SECOND, *Rice and Coleman.*

Both were present in the meeting of the stockholders in August, 1876, when the mortgage was authorized, and Coleman was a stockholder. p. 110.

In that meeting, *all* the stock was voted for the mortgage, (except 30 shares represented by Mr. Carter and not material) Agreed to take bonds, p. 137, bottom. They, since the commencement of this suit have filed a "mechanic's lien." p. 161.

THIRD, *E. Clayton,*

was a stockholder and present in the meeting of August 1876, which authorized the execution of the mortgage, and his stock was represented, p. 110, and 142.

His son, E. M. Clayton was in the meeting and voted for the mortgage, and was agent for his father, $2,400 of the bonds were sold to E. Clayton, in payment of work and are still held by him, p. 81. Also p. 97, that all the contractors knew the condition of the company and of the mortgage.

So it clearly appears in the record, we submit, that all the appellants before this court, either as stockholders, voted for or acquiesced in and ratified the mortgage, or as contractors, assented to and accepted benefit under it, doing their work on the faith of the mortgage, and looking to the bonds issued for their pay, and actually receiving the bonds in payment for their labor.

Having thus authorized or ratified the mortgage and the issue of the bonds, and having received the benefits of them, the appellants cannot be permitted to dispute their validity or value as a security for the money loaned to the company and paid out to the contractors. The trouble on the part of the contractors, doubtless, is, not that they did not fully approve and assent to the execution of the mortgage and the issue of the bonds, but that, contrary to their expectations, as well as of the company, they failed to realize money enough to pay them in full. A miscalculation all around!

The question of estoppel *in pais*, here presented, is not, as contended by appellants' counsel whether the *bond holders* took the bonds on the faith of the assent of the contractors, but whether the contractors having an interest lien did not authorize the company to make *the mortgage*, by knowingly assenting to and ratifying it and taking profit under it.

If we are correct in this view of the case, we do not reach, at all, the questions of statutory or mechanic's lien.

Statutory lien, claimed.

But if the court is not with us in the view presented, then we submit that appellants have no lien superior to that of the appelees or equal to it.

We propose to show—

1. That the prior lien claimed, does not apply to mortgages made by authority conferred in a charter passed by a *special* Act of the Legislature of the State.

2. That the right to execute the mortgage for the purpose of borrowing money, was conferred upon and vested in the railroad company, long prior to the enactment of the allegel lien law, and is therefore not affected by it.

First, the distinction between general and special acts of incorporation, is made by the constitution of North Carolina, and our whole legislation in respect to *railroads* up to the beginning of this controversy, has proceded up upon that destinction.

The Constitution. Art. VIII. Sec. I, declares, "That corporations may "be formed under *general laws*, but shall not be created by *special act* "except for municipal purposes, and in cases where *in the judgment of* "*the legislature, the object of the corporations cannot be attained under generat laws.*" This provision is the key to the construction of the Act. relied on by the appellants.

Accordingly, the Legislature of 1871-2 (Public Laws of N. C., 1871-2, ch. 138, and ch. 199), passed two general laws, the one entitled "*An act to authorize the formation of Railroad companies and regulate the same.*"

"SECTION 1 The general assembly of North Carolina, do enact as fol-"lows : Any number of persons not less than *twenty-five*, may form a com-"pany for the purpose of constructing, maintaining and operating a rail-"road for public use &c."

The other act is entitled. "An act to enable any persons, not less than three, to become incorporated and to regulate such and other corporations."

"SEC. 1. Any *three* or more persons desiring to form themselves into "a private corporation for any purpose not unlawful, may, &c "

It will be observed that the first named Act, in regard to *railroads*, provides in the 10th Section, as follows, among their other powers :

"From time to time to borrow such sums of money as may be neces-"sary for completing finishing or operating their railroad, and to issue "and dispose of their bonds for any amount so borrowed, and to mort-"gage their corporate property and franchises to secure the payment, "or any debt contracted by the company for the purposes, aforesaid, &c."

And Section 45 provides that,

"All existing *railroad corporations* within this State shall respectively "have and possess, all the powers and privileges contained in this Act. "&c.

In this State of the law, the succeeding Legislature (1872-3, Laws of N. C., 1872 3, ch. 131,) passed the Act relied on by the appellants entitled,

"An act to regulate mortgages by *corporations* and sales under them."

That act is in the following words, (omitting the second Section which is not material but is set forth in appellants' brief.)

"SECTION 1. *The General Assembly of North Carolina do enact*, That if "a sale be made under (a deed of trust or morgage,) executed by any com-"pany on all its works and property, and there be a conveyance pursuant "thereto, such sale and conveyance shall pass to the purchaser at the sale "not only the works and property of the company as they were at the "time of making the deed of trust or mortgage, but any works which "the company may, after that time and before the sale, have constructed, "and all other property of which it may be possessed at the time of the "sale, other than debts due to it. Upon such conveyance to the pur-"chaser, the said company shall, *ipso facto*, be dissolved, and the said "purchaser shall forthwith be a corporation, by any name which may be

"set forth in the said conveyance, or in any writing signed by him and "recorded in the same manner in which the conveyance shall be re- "corded"

"SEC. 3. When such corporation shall expire or be dissolved, or its "corporate rights and privileges shall have ceased, all its works and pro- "perty and debts due to it shall be subject to the payment of debts due "by it and then to distribution among the members according to their "respective interests; and such corporation may sue and be sued as be- "fore for the purpose of collecting debts due to it, prosecuting rights un- "der previous contracts with it, and enforcing its liabilities and distri- "buting the proceeds of its works, property and debts among those en- "titled thereto: *Provided*, That all debts and contracts of any corpora- "tion prior to or at the time of the execution of any mortgage or deed "of trust by such corporation, shall have a first lien upon the property, "rights and franchises of said corporation, and shall be paid off or secured "before such mortgage or deed of trust shall be reegistered."

It must be evident that the purpose of this Act was to pre- scribe the *modus operandi* of corporations *going into liquidation from insolvency*—a kind of insolvent debtors' law—and applied to cor- porations other than railroads. It must be further apparent, that the *proviso* was no part of the original Bill, but is an ill considered and hasty amendment, stuck to the end of the Bill, by some ap- prentice hand. It cannot have the sweeping and radical effect claimed for it, or, indeed, any effect at all, we submit, 1st, Because the first section of the Act provides that a sale and conveyance under a mortgage, shall pass to the purchaser, all the property and works of the company, whereas the *proviso* inconsistently therewith declares that all debts and *contracts* pre existing, shall be a first lien upon the same property; 2d, because the *proviso* de- clares that all debts and *contracts* shall be paid off or secured be- fore such mortgage shall be registered. This, of course, would prevent all trusts and mortgages, where the company had not property enough to satisfy the debts and was unable to secure them; 3d, because all *contracts* as well as debts are to be first paid or secured. Apply this to a *railroad* being constructed. Such roads are generally built by contracts for grading, etc., running one or two or more years, the payments to be made on monthly or quarterly estimates of engineers. This *proviso* would put an end to the further construction of railroads, because there could be no mortgage made pending the existence of such and any con- tract for future services or labor or salaries etc. A *proviso* of such

a crude form and uncertain meaning and application, we submit, should either be eliminated from an otherwise valuable Act, or it should only be applied to cases clearly within the operation of the Act, and to those only.

But suppose some effect can properly be given to the *proviso*, we submit that this Act containing the *proviso* is an Act *supplemental* to the Act entitled "Corporations" before referred to (Laws 1871–2 Ch. 199), and does not apply to railroads created by special Act, for the following reasons: The Act of 1871–2, entitled "Railroad Companies," before referred to, is confined to railroads exclusively, no other corporations being named or referred to in the Act, while the act entitled "Corporations," &c., passed at the same session, is confined exclusively to "corporations," and no where names or refers to railroads. The Act containing the *proviso* also is confined to "corporations," and "companies," and no where names or refers to railroads. We therefore are justified, we think, in the conclusion that the Act and *proviso* apply to corporations other than railroad corporations.

But it is not necessary to our case to go so far, but it is only necessary to show that if it applies to railroads, it only and properly applies to railroads formed under the *general laws* before set forth for forming railroad companies, and not to those created by special Act, as was ours.

Altho' this court will consider the act itself, containing the *proviso*, yet if any light is thrown upon its interpretation by subsequent legislation, the court will avail itself of it. There is such light.

The Statute Law of N. C., pursuant to an act passed 1872–3, was by authority of law digested and revised by Judge Battle, and is contained in the work entitled "Battle's Revisal," before refered to. The act containing the *proviso* was by him, located in and as part of the chapter entitled "Corporations," being ch. 26 of the work. The Revisal was accepted and adopted by the legislature, and tho' many legislatures have met since, the location of the *proviso* as an amendment of the act on corporations, and as such applicable only to corporations formed under the general law, has been left undisturbed and unquestioned. As farther and still more conclusive proof that the *proviso* does not apply to rail-

road corporations created by special act, we refer both to contemporaneous and subsequent legislation in granting charters by special act. We submit some examples.

1. At the same session which enacted the *proviso* act, the *Carolina Central Railway* was incorporated, see Acts 1872–3, ch. 75. By sec. 18, the company is authorized to borrow money and issue bonds, to build road, branches, steam-boats to connect therewith, and the 19th sec. is in these words, viz:

"SEC. 19. To secure the payment of these bonds and any other evi-
"dence of debt issued as aforesaid and the interest thereon as the same
"becomes due, the said corporation may execute and deliver mortgage
"deeds with power of sale to such trustee or trustees as may be selected
"* * * * * conveying its railway, branches, franchise and property
"including its road bed, superstructure, choses in action and all its real
"and personal property * * * * * and the said deed when duly
"executed and registered * * * * * *, shall give it priority and
"preference over all claims against said corporation. * * * *

2. See also "An act to incorporate the *Midland North Carolina Railway Co.*, ratified at the same session and giving like powers of borrowing money and executing mortgage therefor. Act. 1872–3 Ch. 54, Sec. 6.

3. An act to incorprate the *Snow Hill & Greenville & Goldsboro Railroad Company.* Acts 1872–3, ch. 26, sec. 10. Indeed, there are six railroad companies created at that session, with the power to issue bonds and secure them by mortgage.

So take the succeeding legislature of 1874–5, and the laws of that session created even more railroad corporations with power to borrow money, issue bonds and make mortgages to secure payment. We refer to a few as examples. 1. The *Wilmington, Raleigh and Danville Railroad Co.* Acts 1874–5, ch. 218, sec. 13. 2. The *North Carolina Railroad Co.*, ch. 261. sec. 11. 3. *Fayetteville & Greensboro Railroad Co.*, ch. 88, sec. 6.

And from that time to this, all or nearly all special acts creating railroad companies, have provided for the issue of bonds and making mortgages to secure payment, and it is safe to say that without such power no Southern railroad can be built.

So whatever other construction may be put upon the *proviso*, we submit that it would be unreasonable and against the spirit and purport of our legislation, to apply it to raailroad charters

created by special act of the Legislature, which from their very nature, must be "a law unto themselves," unless they are in conflict with the Constitution.

Second. *The consolidation and legal effect of it.*.

The following provisions of law are material to this question:

An act to authorize the formation of railroad companies and to regulate the same. Laws 1871–2, ch. 138.

"SEC. 58. It shall and may be lawful for any railroad company or "other corporation, organized under the laws of this State, or of this "State and of any other State, and operating a railroad or bridge either "wholly within, or partly within or partly without this State, to merge "and consolidate its capital, franchises and property with the capital "stock, franchises and property of any other railroad company, or com- "panies organized under the laws of this State, or under the laws of "this State and any other State, or under the laws of any other State or "States whenever the two or more railroads of the companies or cor- "poration so to be consolidated shall or may form a continuous line of "railroad with each other or by means of any intervening railroad, "bridge or ferry. * * * * *

"SEC. 60. Upon the making and perfecting of such agreement and act "of consolidation as hereinbefore provided, and filing the same or a copy "thereof in the office of the Secretary of State as aforesaid, the said cor- "porations, parties thereto shall be deemed and taken to be one corporation "by the name provided in said agreement and act, but such act of con- "solidation shall not release such new corporations from any of the re- "strictions, liabilities or duties of the several corporations so consoli- "dated.

"SEC. 61. Upon the consummation of said act of consolidation as afore- "said, all and singular the rights, privileges, exemptions and franchises "of each of said corporations, parties to the same, and all the property, "real, personal and mixed, and all debts due on whatever account to "either of said corporations as well as all stock subscriptions and other "things in action belonging to either of said corporations shall be taken "and deemed to be transferred to and vested in such new corporation "without further act or deed; and all claims, demands, property, rights "of way and every other interest, shall be as effectually the property of "the new corporation as they were of the former corporations, parties to "the said agreement and act, and the title to all real estate taken by deed "or otherwise, under the laws of this state vested in either of such cor- "porations, parties to said agreement and act, shall not be deemed to "revert or be in any way impaired by reason of this act or anything done "by virtue thereof, but shall be vested in the new corporation by virtue "of such act of consolidation"

"SECT. 29. Sub-Section 10. From time to time to borrow such sums of "money as may be necessarry for completing and finishing or operating "their railroad, and to issue and dispose of their bonds for any amount so "borrowed, and to mortgage their corporate property and franchises to se- "cure the payment of any debt contracted by the company for the purposes "aforesaid, and the directors of the company may confer on any holder of "any bond issued for money borrowed, as aforesaid, the right to convert "the principal due or owing thereon into stock of said company at any "time not exceeding ten years from the date of the bond, under such "regulations as the directors may see fit to adopt."

"SEC. 45. All existing railroad corporations within this state shall re- "spectively have and possess all the powers and privileges contained in "this act."

An Act to incorporate the Greenville & French Broad Railroad Company.

"SEC. 27. *Be it further enacted*, That the said Company shall be entitled "to all the rights, privileges immunities therein granted in each of the "States of Tennessee, North Carolina and South Carolina, whenever said "States shall respectively pass an act similar to this, so that this Act of "Incorporation shall inure and be in force in each and every of the "States aforesaid: *Provided* this State may at any future time cross the "same, or connect therewith, at one or more points, any other road, at the "discretion of the General Assembly.

"SEC. 28. *Be it further enacted*, That the said "Greenville and French "Broad Railroad Company" shall have power to borrow on the credit "of the said Company any amount they may see fit, not exceeding two "million of dollars, and may give *a mortgage or lien* on said road, or any "other portion thereof which money shall be expended only in the con- "struction of said road; *provided* that nothing in this Act contained shall "be so construed as to impair in any manner vested chartered rights of "any Turnpike company over which said Railroad may be built, without "a reasonable compensation, to be ascertained in the same manner pro- "vided for the condemnation of land.

"SEC. 29. *Be it further enacted*, That this act shall be regarded as a "public act, and given in evidence as such, and shall be in force from and "after its ratification.

"Read three times and ratified in General Assembly, this 13th day of "February, 1855."

An Act to amend the charter of the Greenville and French Broad Railroad Company. Laws of 1874–5, Chapter 29.

"WHEREAS, The Greenville and French Broad Railroad Company of "North Carolina, and the Spartanburg and Asheville Railroad Company "of South Carolina, have, in pursuance of the laws of North and South

"Carolina, been consolidated into one company, under the corporate "name of the Spartanburg and Asheville Railroad Company; *and* "*whereas*, it is deemed expedient to repeal some of the restrictions con- "tained in the charter of the Greenville and French Broad Railroad "Company, &c.:

The two companies were duly consolidated on the 31st of July, 1874, and were recognized as so consolidated by the Legislature of North Carolina as above set forth in the act of 1874, amending the charter by *removing restrictions* in it, not by abridging rights previously conferred.

From these several Acts which are unrepealed and in force to this day, it is seen—

1. That the Greenville and French Broad Railroad Company was created in 1855.

2. That it had the right and power to borrow money to build the road, issue bonds and secure them by mortgage.

3. That it had the right to consolidate, and did so lawfully.

4. That no rights, privileges, or franchises were lost by the consolidation, but were *expressly* preserved.

5. That they were transferred in their integrity to the consolidated company expressly, and were so recognized by the Act of 1874, amending the charter

The right to borrow money was a right essential to the success of the road, and we submit that it could not be taken away, certainly not without a direct Act of repeal, instead of the indirect one of the *proviso*, which neither refers to railroad corporations or undertakes to repeal the provisions of pre-existing Acts of incorporation, special or general.

Central R. R. & Banking Co. vs. Georgia, 92 U. S. 665. This case is directly in point, only the facts of our case seem stronger for the appellee.

See also Phila. & Wil. R. R. Co. vs. Maryland, 10 How. 375.

Delaware R. R. cases, 18 Wall 206.

The of *R. R. Co. vs. Georgia*, 98 U. S., 359, is unlike our case, and not applicable, among other reasons, because—

1. The charter of the Greenville & French Broad R. R. Co. is made a *Public Act*.

2. The corporate existence of it was not extinguished by the consolidation; on the contrary, its charter, by *that name*, was

amended *after* the consolidation. The consolidation was effected July, 1874, and the amendment passed December, 1874.

3. There was no Act passed incorporating the consolidated company. It is the result of the compact of the two companies.

4. The legislative *intent* clearly appears that the corporate rights of the G. & F. B. R. R. Co. should not be extinguished but only transferred.

5. The continued existence of the G. & F. B. R. R. Co. was recognized by the Legislature *after* the enactment of the *proviso*.

The case of *Fox vs. Seal*, relied upon below, has no application to this case, for there the disabling statute was passed nine years before the charter which was claimed to be affected by it, and this Act in express terms includes "rail roads." But it is important to notice that the court questions the policy of the Act, because it creates *secret liens* upon railroad securities, impairs their value, cripples their negotiability, and counteracts the very purpose of their creation.

II.

MECHANICS AND LABORERS LIEN, CLAIMED.

The Constitution of North Carolina, Art. XIV., sec. 4, provides:

SEC. 4. "The General Assembly shall provide by proper legislation, for giving mechanics and laborers an adequate lien on the subject matter of their labor."

In pursance of this provision of the Constution, was passed the act entitled "An act for the protection of Mechanics and other laborers, materials, &c." Laws of N. C. 1869–70, ch. 206.

We think this claim of lien, is shortly disposed of by the decis and opinion of the Supreme Court in the case of *Whitaker vs. Smith*, 81 N. C., 340.

There, an overseeer on a farm, claimed a lien upon the crop or land, for his wages The court held that he was not a laboror, within the act. and then proceeds to construe the act in the following language:

"A very large proportion of the laboring population of the State, had "just recently been released from thraldom and thrown upon their own "resources, perfectly ignorant of the common business transactions of "life, and this provision of the Constitution and the Acts to carry it into "effect, were intended to give protection to that class of persons who "were totally dependent upon their manual toil for subsistence. The "law was designed exclusively for laborers and mechanics,"

The opinion then proceeds to define a laborer to be "one who toils, who is dependent upon his manual labor for his subsistence," and referring with approbation, to the case of *R. R. Co. vs. Leufer*, 8 Penn. St., 168. (24 Am. R. 189.) where it is held, that an engineer, constructing a railroad, is not a laborer or entitled to a lien as such, the court there saying: "That in all statutes of this "kind, the intent has been, to protect a class of persons who are "wholly dependent upon their manual toil for subsistence, and "who cannot protect themselves."

Statutes in derogation of the common law, or favoring a particular class, must be construed strictly, and the statute will not be extended beyond its express words.

Bond vs. Neagle, 46 Ga, 112.

S. & C. R. R. vs. Callahan, 49 Ga., 506.

R. R. Co. vs. Grant *et al*, 56 Ga., 58.

Such Statutes do not apply to railroads, unless the terms of the statute apply *literally* to them, among other reasons assigned, because the public has an interest in them.

Dun vs. North R. W. Co., 24 Mo., 493.

Galveston R. R. vs. Cowdry, 11 Wall, 459.

29 Am. R. 412. 14 Bush., 425.

It is material to be observed that the claims of lien filed by the appellants are filed by them as "contractors," as they really were, and not as mechanics or laborers. Railroad contractors, above most men, by their intelligence and business qualities, are able "to protect themselves," without the aid of a statute to protect the ignorant and defenceless.

"Contractors" are not named in the statute, and are no more within its meaning than other classes of persons who deal with railroad companies. For example: Are "contractors" who furnish the rails (the complainant Rolling Mill Co.), who furnish the engines, cars, and other outfit, protected by the statute?

The liens as filed are void for non-compliance with the statute, in not specifying the date of the beginning and finishing such work, setting forth the materials furnished each locality, and in not being filed within the proper time.

Davis vs. Alford, 94 U. S., 545.

In discussing the alleged lien under the *proviso* of the Statute, we omitted to call attention to the findings of the referee as to the state of the claims of the appellant contractors.

He finds that the mortgage was executed October 1, 1876.

That *Rice & Coleman* had been paid all that was due to them up to that date. (Record, p. 85.)

That *E. Clayton* had been paid all due to him up to that date, except $3,316.17 due for work done in *South Carolina* in 1874.

While he does not find as to *Fry & Deal*, the testimony of B. R. Blake, the Treasurer of the Company, shows that they had been paid all that was due to them to the date of the execution of the mortgage.

In conclusion. The Master finds that there was no fraud or unfairness in the sale or hypothecation of the bonds, or the contracts or expenditures of the Company; that the bonds were disposed of at their fair market value. The evidence also is full that, although the Railroad Company made every effort to induce the contractors and citizens adjacent to the road to take the bonds, and also to dispose of them in the markets of the country where such securities are usually sold, they had no market value, and could not be sold, and that it was only by the immediate friends of the road, and those interested in its completion, that money could be raised upon the bonds and the work prosecuted. See evidence of D. R. Duncan (Printed Record, p 87,) and the evidence of R. Y. McAden (Printed Record p. 113).

The counsel for the appellants in his brief (p. 23) throws out a suggestion somewhat *ad populum*, to which this pertinent reply can be made: The record shows (p. 110) that "the builders of trestles, movers of dirt, and blasters of rock," have received a much larger per cent. upon their contracts than the bond holders have upon their bonds; and that while the latter have, through the Company, paid in cash to the contractors near $300,000, they have in return been forced to take in full payment an "elephant."

Wm. E. Earle
Sol. for Appellees